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Judiciary Committee
January 23, 2013

[LB50 LB99 LB128 LB142 LB148]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 23, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB50, LB148, LB128, LB142, and LB99. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. This is the first hearing for this legislative session and we have some new members. I'll start out with Senator Chambers from Omaha, one of our new members; Senator Davis is also a new member; and Senator Seiler. So welcome to these new members. Senator Christensen is...will be with us shortly; Senator McGill, of course, who's been with us; Senator Coash who's been with us; and the vice...well, Senator McGill is the Vice, Vice Chair... [LB50]

SENATOR MCGILL: Yes. [LB50]

SENATOR ASHFORD: ...and then Senator Lathrop, of course, the Vice Chair of the Committee. And welcome to all of you. We have a few...most of you've been here before. We have a few ground rules. One is that the...we ask those who wish to testify to confine their comments to three minutes. You'll see a yellow light which will indicate that it's time to sum up. And then, of course, if you have...we have questions and that sort of thing that will extend the time. All of you who wish to testify fill...please fill out the sheets that are on the desk in front of the testifier's desk, and if you don't wish to testify but wish to indicate your neutrality or your opposition or your support, you may also do that. The first bill is my bill, actually, LB50, and I will introduce it. Senator Lathrop, my name is Brad Ashford. I represent Legislative District 20, and I'm here to introduce LB50. The bill addresses the following issues: personal responsibility of an individual over the age of 19; and the owner of a firearm, we are asking that they make certain that they are keeping these guns secure while in the home and asking that they do so in order to prevent, hopefully, some of the catastrophic incidents that we have witnessed--or help prevent--some of the catastrophic incidents that we've seen in Nebraska and also around the country. Senator Chambers remembers years ago the...Chinowth I think was the name of the case. It was a young nine-year-old boy who found a firearm on top of an icebox or refrigerator in the family home and accidentally shot another child--killed him, and, of course, the horrific incidents at Von Maur and other incidents that we're all aware of where it seems as if one of the causes was the negligent leaving of a firearm in a home by a parent or guardian. And that firearm was made accessible and the child, the juvenile, was able to take that weapon and commit very, very, very horrible acts. This is a personal-responsibility measure. It doesn't in any way, shape, or form prevent or prohibit in any way an individual from purchasing, possessing, or using a firearm in a legal manner. We're asking that firearm owners be

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responsible. If they are not responsible, and if the weapons are left around the home and they are accessible, and something happens where damage occurs because of a person who is known to be mentally ill or otherwise not legally able to possess or carry a firearm, that owner of the firearm would be legally responsible to the damaged party. It's not unlike parental responsibility for a number of things that go on in life such as motor vehicles and alcohol and those kinds of things where parents do bear responsibility. And we often increase civil penalties and even criminal penalties for those kinds of acts or lack of prudence and personal responsibility. The civil liability is not criminal liability. What that means, of course, is that if there is damage done to a third party by someone who gets access to that firearm who is not legally responsible or is not legally able to possess that firearm, that owner is going to be civilly liable. In talking to a number of gun store owners, one in particular in Omaha that I spent a lot of time working with on these bills, the concern...they have expressed to me their support and their sense that a personal responsibility, along with some of the work we're going to be doing with mental health and juveniles especially, will...are important elements in other...as well as looking at illegal firearms on the street and many other issues in piecing together solutions to these horrific issues that we're faced with seemingly every day. So with that, Mr. Vice Chair, I would undertake to answer any questions. [LB50]

SENATOR LATHROP: Anybody have any questions for Senator Ashford? Senator Seiler. [LB50]

SENATOR SEILER: Mr. Chairman. Senator Ashford, on your exemption in this LB it says, and being under the supervision of a person under age nineteen or older is an exempt. I'm thinking that a high schooler 16 years of age has a driver's license, he can buy a valid hunting license. [LB50]

SENATOR ASHFORD: Um-hum, um-hum. [LB50]

SENATOR SEILER: And he takes his trusty dog and he, by himself, goes out and hunts. [LB50]

SENATOR ASHFORD: Right. [LB50]

SENATOR SEILER: Does he not...isn't he in violation of your exception then, because he doesn't have a 19-year-old in supervision? [LB50]

SENATOR ASHFORD: Except for the exceptions down at the bottom which talk about hunting and target shooting--that's at the bottom of page 2--would exempt that situation in the underlined portion where it says.... [LB50]

SENATOR SEILER: Not limited to hunting and target shooting? [LB50]

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SENATOR ASHFORD: Yeah. [LB50]

SENATOR SEILER: You think that modifies the requirement of having a 19-year-old with him, under the supervision? [LB50]

SENATOR ASHFORD: I think it does, but if it doesn't we can address that. If it does not, then we can address that, but that's what it's intended to do. [LB50]

SENATOR SEILER: Yeah, I'd like to see us address that... [LB50]

SENATOR ASHFORD: Yeah. [LB50]

SENATOR SEILER: ...because I think that limitation violates the... [LB50]

SENATOR ASHFORD: Right. [LB50]

SENATOR SEILER: ...16-year-old that has a license... [LB50]

SENATOR ASHFORD: Right, to hunt. [LB50]

SENATOR SEILER: ...and hunts by himself. [LB50]

SENATOR ASHFORD: Right, right. [LB50]

SENATOR SEILER: Okay. [LB50]

SENATOR LATHROP: I've got one question or one point to make and that is since it's a civil proceeding, basically what you're doing is opening up the door for a tort action against the gun owner... [LB50]

SENATOR ASHFORD: Correct. [LB50]

SENATOR LATHROP: ...for a failure to properly secure a firearm. [LB50]

SENATOR ASHFORD: Correct. [LB50]

SENATOR LATHROP: And the standard is negligence, same as an auto accident or something like that? [LB50]

SENATOR ASHFORD: Correct. Correct. [LB50]

SENATOR LATHROP: I see no other questions. Do you want to close? [LB50]

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SENATOR ASHFORD: I'm fine waiving closing. [LB50]

SENATOR LATHROP: Okay, perfect. Then we will take the first proponent of LB70 to...pardon me, of LB50 to testify. And I don't know if we covered this? Do we have any proponents, anybody here in support? Anyone here wish to testify in support of LB50? Anyone here in opposition? Okay. And I don't know if we covered this but if we haven't, you can come up to the front row and get in line if you like. But please fill out an intake sheet and then we'll--do we put it in the box? Is that what we're doing? [LB50]

SENATOR ASHFORD: Yes. [LB50]

SENATOR LATHROP: Or give it to the page? [LB50]

SENATOR ASHFORD: Or give it to the page is the best. [LB50]

SENATOR LATHROP: That helps us keep a good record and when you testify, if you wouldn't mind, begin by giving us your name and spelling your last name for us, please. [LB50]

DR. BRYAN VAN DEUN: (Exhibit 1) Yes, sir. My name is Dr. Bryan Van Deun, B-r-y-a-n, last name two words, V-a-n D-e-u-n. [LB50]

SENATOR LATHROP: You may proceed. [LB50]

DR. BRYAN VAN DEUN: Thank you. Senator Ashford and the Judiciary Committee, I am speaking on behalf of the membership of the Nebraska Firearms Owners Association, known as the NFOA, in opposition to LB50. We are once more here to discuss the safe storage of firearms. This has been a recurring issue for the Unicameral, and even though this bill changes how we may regulate the storage of firearms, it continues to make the same types of errors. First, this bill fails to recognize that persons of the age of 18 may legally purchase and possess long arms for any lawful purpose. It then goes on to use vague and undefined wording of "unreasonably." What is "reasonable?" There is no standard set, so Nebraskans would have no way to determine if their firearms are stored in an acceptable manner or not. Do they need to go to the extreme of having them disassembled and locked in safes? Or is a simple trigger lock reasonable? What if no member of the household is a minor or mentally incompetent? If the firearm were stored inside a locked home and a minor or mentally incompetent person broke in, is that reasonable? What if the criminal trespassed and entered the home through an unlocked door? Is that reasonable? What if the thief was the child of a guest invited into the home and that child found a firearm unloaded and with a trigger lock on it and then cut the trigger lock off the firearm? Is that reasonable or unreasonable storage? Or consider this scenario: A homeowner's 17-year-old daughter retrieved a firearm and uses it to defend herself against a criminal home invasion.

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Should the criminal be able to sue the homeowner for damages? Who gets to sue? Is it just people physically harmed? If my child obtains someone's gun and the mere thought scares me, then can I sue that gun owner as well? The NFOA has spoken with several attorneys about this bill, and they all tell us this bill is completely unnecessary. Under current law, no attorney would have any hesitation to file a negligence claim in a situation covered by this proposed bill. The only thing this bill would do is to make it easier for a plaintiff's attorney to make out their prima facie case for negligence. The explicit language in the bill would allow attorneys to argue that leaving a firearm unsecured or in any storage state that might be questionable for security is negligence per se. This bill offers a major shortcut for trial lawyers to prove all the elements of a negligence claim, such as duty, breach, causation, and damages, and according to the attorneys we have spoken with, is completely unneeded. Instead of trying to punish people making sincere attempts to secure their firearms, why don't we try to incentivize doing a better job at securing firearms? Instead of using punishment, could we try a positive incentive? What the NFOA proposes is a tax holiday for those buying secure devices such as gun safes, lock boxes, and gun locks, the responsible gun owner would pay no sales tax if purchased during the holiday. This could also be extended to include firearms safety training classes if such safety training and education were priorities of the Unicameral. [LB50]

SENATOR LATHROP: Very good. Thank you, Doctor. [LB50]

DR. BRYAN VAN DEUN: Yes, sir. [LB50]

SENATOR LATHROP: Anybody have questions for Dr. Van Deun? Senator Chambers. [LB50]

DR. BRYAN VAN DEUN: Yes, sir. [LB50]

SENATOR CHAMBERS: Doctor, I'm looking at this paragraph, the last one on the page, probably the next to the last sentence. "The explicit language in the bill would allow attorneys to argue that leaving a firearm unsecured or in any storage state that might be questionable for security, is negligence per se." When you have a per se violation, you don't have to prove negligence. The mere occurrence is considered a basis for recovery. So if they talk about "reasonableness," that lifts it out of the per se category already because you have to establish that due care was not exercised. So you can indicate to whoever the lawyers are that Senator Chambers disagreed with them. And if they meant to say what you said they said, then they don't know the law. And that's not a comment on all the rest of the points that you made. [LB50]

DR. BRYAN VAN DEUN: Thank you, Senator. [LB50]

SENATOR LATHROP: Very good. Thank you for your testimony, we appreciate hearing

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from you. Next opponent. [LB50]

RON JENSEN: Chairman Ashford, members of the Judiciary Committee, my name is Ron Jensen. I'm a registered lobbyist appearing before you this afternoon on behalf of the National Rifle Association and in opposition to LB50 as it's presently worded. As I've pointed out in these hearings before, I'm an English major, not an attorney. So I turned to a couple of attorneys to take a look at this bill. There were some things that were troubling to them, and I'm going to pass that along without really passing judgment on it myself. Both attorneys noted that though this legislation attempts to impact civil liability, it's codified into the criminal...state criminal code, and asked why that is. And I don't have that answer, perhaps you do. But again, I'll just note that for you. Beyond that, counsel questioned the bill's apparent intent to assess civil liability in the absence of injury or harm. The mere fact that a youth might access the firearm triggers liability, but for what? Legal counsel also had a problem with the term "mentally incompetent" in that it is vague and subject to interpretation. Apparently, there's no other place in the state criminal code where that term appears. And federal firearms purchase and possession prohibitions use the term "adjudicated" or "committed." While that term might not encompass everyone we might choose to consider odd or disturbed, it does have the same advantage as a light switch. It's either on or it's off and not subject to opinion, conjecture, or speculation, which is almost certainly why it is used federally. In addition, counsel informs me that an individual who carelessly leaves a gun accessible to an individual that should not possess or use it and subsequently uses it in a manner to cause injury or death or other harm, is already liable under present statutes establishing ordinary liability, and that additional legislation such as LB50 sort of piles on to this liability that already exists in tort law. We feel that if the aim of LB50 is to encourage firearm owners to secure their guns, a better approach might be to create a carrot rather than a stick. Negligence resulting in harm or damage already being compensable under general tort law, you could incentivize a certain storage method by providing, for example, that if a person without authorization obtains a firearm from a locked safe or other container or disables a locking device that was correctly attached to that firearm, the owner of the firearm is not civilly responsible for any damage or injury the person might cause with it. Such a provision would give owners a strong reason to lock up their guns because they would then be protected from various liability for the acts of another person. It would not, however, seek to punish them for the acts of another person. If the committee does wish to give LB50 further consideration, we strongly recommend that it be so amended. [LB50]

SENATOR LATHROP: Thank you, Ron. Any questions for Mr. Jensen? Senator Chambers. [LB50]

SENATOR CHAMBERS: Based on what you read, which I hadn't seen or heard before you came... [LB50]

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RON JENSEN: Sure. [LB50]

SENATOR CHAMBERS: You're speaking for the NRA,... [LB50]

RON JENSEN: I am. [LB50]

SENATOR CHAMBERS: ...the National Rifle Association. [LB50]

RON JENSEN: I am. [LB50]

SENATOR CHAMBERS: They don't have any objection, if I understood you correctly, to federal regulations or rules relative to safe storage of firearms? [LB50]

RON JENSEN: No. Senator Chambers, I really cannot speak to that. I'm hired to represent them here in legislation that comes before the Nebraska Legislature. [LB50]

SENATOR CHAMBERS: So what you...you'd made reference to federal law. With your...when you made reference to it... [LB50]

RON JENSEN: Sure. [LB50]

SENATOR CHAMBERS: ...that didn't mean that you support the federal law. Is that correct? [LB50]

RON JENSEN: Well, I do support it and I happen to know that the NRA supports the NICS, the national instant...NICS, National Instant Check System. And, in fact, in the last session we worked to--along with the State Patrol--to make Nebraska NICS compliant with particular reference to mental persons who have been adjudicated or committed not being able to buy or possess a firearm. [LB50]

SENATOR CHAMBERS: And you do not, as far as you understand, believe that the NRA is opposed to safely storing firearms and keeping them out of the possession of those who ought not to have them? [LB50]

RON JENSEN: That's pretty broad. And I'm really not authorized to respond to that. I'm sorry. [LB50]

SENATOR CHAMBERS: So then there are situations...I'll ask it a different way. [LB50]

RON JENSEN: Okay. [LB50]

SENATOR CHAMBERS: There are situations where the NRA favors firearms being made available to people who ought not to have them, is that correct? [LB50]

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RON JENSEN: I don't think so. I don't believe that they do so favor that. [LB50]

SENATOR CHAMBERS: Okay, so then the way I phrased it the other way would be correct too. [LB50]

RON JENSEN: Okay. [LB50]

SENATOR CHAMBERS: Okay. I'm just trying to be clear. [LB50]

RON JENSEN: I understand. I understand. But understand I'm on a kind of a limited license so far as that's concerned. [LB50]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB50]

RON JENSEN: Okay. Thank you, Senator. [LB50]

SENATOR LATHROP: Senator Ashford, do you have a question? [LB50]

SENATOR ASHFORD: No, just getting away from the limited license and just using common sense. If you had a young person in your home who was 15, let's say, and is being treated for schizophrenia but not adjudicated mentally ill, and you knew that to be a fact, and it was your child, and that juvenile was in the home, and you left a loaded firearm on a dining room table and went to a movie, and that young person had a delusion that he wanted to go out and shoot the neighbor, do you think that that is a reasonable act to keep that gun on the table? [LB50]

RON JENSEN: No, I don't. And you tell me, because you're an attorney and I'm not, would not that person already be liable under general tort law? [LB50]

SENATOR ASHFORD: I don't know. I don't know. [LB50]

RON JENSEN: You know, if--not to digress too far-- [LB50]

SENATOR ASHFORD: I don't think so. It's possible, but I think what we're saying here...I think--I know what the NRA is saying is because it's a gun it really--you're making the gun liable, in effect. But...and we always get back to that every time we deal with this issue. If there's a gun involved, then there's no liability, there's nothing. There's no personal responsibility because anybody who would be opposed to something like this, and maybe the wording is--as Senator Seiler has correctly stated--needs to be cleaned up. But the basic idea of personal responsibility means you have to act...it means acting reasonably and prudently under a certain set of circumstances you know exist. And if you have a firearm--this is not a personal critique--but if you have a--but it's

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a general statement--if you have a firearm that you know can be a dangerous instrumentality if it gets into the hands of somebody who you know is a young person that's schizophrenic, and you know they have had episodes of...delusional episodes, and you leave that gun accessible to that person--you leave that home, it seems to me that that is the utmost...that's...I can't conceive of a better example of a lack of personal responsibility. And that, you know, whether or not you can now--and I have to defer to my colleague, Senator Lathrop, to know if there is civil liability in that case. But I think it's very difficult to bring a civil case in that kind of situation. [LB50]

RON JENSEN: Both attorneys that I consulted, a Nebraska attorney and the NRA's counsel, said that that individual would, indeed, be liable under present statute. [LB50]

SENATOR ASHFORD: Well, I don't know. I'll have to defer to my...the experts on the committee, but thank you. That's all I have. [LB50]

SENATOR LATHROP: Okay. [LB50]

RON JENSEN: Can I say just another word about mental competency and mental incompetency? [LB50]

SENATOR LATHROP: Briefly, briefly. [LB50]

RON JENSEN: You know, as we proceed with this--and we'll probably talk about that again this session--dangerousness and violence is hard to identify--I know more about mental health than I do about law, actually--is extremely difficult to identify. Only 3 percent of mentally ill individuals are dangerous, a smaller proportion than the general population. And psychiatrists will argue about whether it can be identified, and they're all agreed that it pretty much can't be predicted. [LB50]

SENATOR ASHFORD: I disagree with you 100 percent. [LB50]

RON JENSEN: Okay. [LB50]

SENATOR LATHROP: Well, we probably will be talking about it given the events that are taking place across the country. [LB50]

RON JENSEN: Okay. Thank you. [LB50]

SENATOR LATHROP: Thanks, Ron. Next opponent, if any. Good afternoon. [LB50]

JEREMY CADY: Good afternoon. Jeremy Cady. [LB50]

SENATOR LATHROP: Could you spell your last name, Jeremy? [LB50]

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JEREMY CADY: Last name's C-a-d-y. Members of the Judicial Committee, I wrote this up last minute here. And I'm not a public speaker here so give me a little... [LB50]

SENATOR LATHROP: That's okay. We listen to people that aren't public speakers, so you're fine. [LB50]

JEREMY CADY: I'm here in opposition as a father, a gun owner, and also as a scout leader and someone that works with youth. I agree that, you know, there's a responsibility for us to keep our firearms put away and out of hands. What I don't agree with is the legal ramifications that this bill puts in place above and beyond the negligent. As I said, most responsible gun owners strive to secure firearms. I keep mine put away at all times. I've got two children at home, and one of them is diagnosed with ADHD. So I, you know, just because sometimes his thought processes always aren't right on, I make sure everything stays in place. But it's something that's near and dear to me. I think we would be better served by introducing youth education programs such as the NRA's Eddie Eagle or the gun safe programs offered through the NSSF, the National Shooting Sports Foundation, into our school curriculums and other youth programs. There is quite a few other states that have this in place--that I don't have right now--but there are many incidents across the nation which shows that these programs have proved successful. And if you're not familiar with these gun safe programs, essentially what they put forth is that they teach the children if they find a gun, whether it's out on the playground, along the sidewalk, at grandpa's house, whatever, that they stay away. Some of the main steps is that you keep everybody away, tell a trusted adult, and the adult will come and take care of it. This is a program I've actually been trying to put through in many different venues. And obviously, a lot of people are...a lot of places are scared to get into this. But I truly believe that this would be a good way of trying to teach those children that when they do come across a firearm that there's a time and a place for it. And toying around with them when there's not an adult and stuff is not right. [LB50]

SENATOR LATHROP: Very good. [LB50]

JEREMY CADY: That's about all I got. [LB50]

SENATOR LATHROP: Good. Well, thanks for coming down. This is your first time to testify? [LB50]

JEREMY CADY: Yeah. [LB50]

SENATOR LATHROP: All right. Well, you did a fine job. Let's see if anybody has questions for you. I see none. All right, thanks for coming down. [LB50]

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JEREMY CADY: All right. Thanks, guys. [LB50]

SENATOR LATHROP: Good afternoon. [LB50]

JOHN WALLACE: Good afternoon. My name is John Wallace, first name, J-o-h-n, last name, W-a-l-l-a-c-e. I'm here in opposition of LB50. The real reason here is that it fails to define what is reasonable storage or reasonable precautions. What is reasonable precautions to me may not be reasonable precautions to you. If I keep a firearm at my home where I live by myself, where there are no mentally incompetent adults that normally have access, that there are no children that are ever there, and I keep that firearm, say, locked in a closet, an individual who is mentally incompetent could break into the house, could break into the closet, steal the firearm, do somebody harm with it, am I negligent in that? I mean, do you think I should be negligent in that? [LB50]

SENATOR LATHROP: That's a rhetorical question because...yeah, we'll just have you testify, okay? [LB50]

JOHN WALLACE: Okay. [LB50]

SENATOR LATHROP: Because otherwise it'd take too long for all of us to express our opinions today. [LB50]

JOHN WALLACE: All right. And that's the basic point I wanted to make. Firearms accidents among children have been going down for years and years, they're now at their historical lowest point ever. Most of this is attributed to improved storage devices, improved safety and education for both adults and the children. And if this bill could be better written, it might be something that I could get behind. But as it stands currently now, it opens up the door for civil liability for law-abiding gun owners to far too extreme of an extent in an area that is already covered. Again, we never did get a clear answer on this, but already covered by negligence laws. That's pretty much all I got for you. [LB50]

SENATOR LATHROP: Okay. [LB50]

JOHN WALLACE: This is all off the top of my head. Thanks for listening. [LB50]

SENATOR LATHROP: All right, John. Do you represent an organization today or are you just here on your own behalf? [LB50]

JOHN WALLACE: I represent the Nebraska Firearms Owners Association. I'm the secretary of that organization, an elected board of directors. [LB50]

SENATOR LATHROP: Okay. Good. We'll see if anybody has any questions for you

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before we let you get away. Senator Chambers. [LB50]

SENATOR CHAMBERS: Brother John, I think you made a very reasonable statement when based on the way the bill affects you right now you're opposed to it, but there might be a way that could let you get behind it. And if I understood the thrust of your testimony, it was dealing with the idea of what is reasonable. You mentioned that there are courses and other information made available relative to devices and methods of safely and properly storing weaponry. Those kinds of things I presume you feel are reasonable in terms of keeping these guns out of the hands of the ones the bill aims to keep it out of, right? [LB50]

JOHN WALLACE: This is correct. [LB50]

SENATOR CHAMBERS: See, you came and offered something, not just opposition. I appreciate that. You're a young man. Keep developing like that, and one day you're going to be sitting on this side of the table. [LB50]

JOHN WALLACE: Thank you very much for your time. If nobody has anything else. [LB50]

SENATOR LATHROP: I see no other questions. Thank you, Mr. Wallace. [LB50]

JOHN WALLACE: All right. Thank you. [LB50]

SENATOR LATHROP: Anyone else here to testify in opposition? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB50, Mr. Chair, brings us to LB148 and back to our Chair, Senator Chairman Ashford. [LB50]

SENATOR ASHFORD: (Exhibit 2) Thank you, Senator Lathrop, members of the committee. LB148 is a bill that would clarify that not only are firearms prohibited from being in the hands of juveniles and convicted felons, but that ammunition is also prohibited. In an effort to limit gun violence, we have already criminalized the sale, transfer, and possession of firearms in most instances by juveniles under Section 28-1204.01, and in all instances by convicted felons and other prohibited persons under 28-1206 and 69-2422. LB148 would simply add the prohibition against the sale, transfer, and possession of ammunition. We are...we currently allow juveniles to possess or transfer firearms for legitimate sporting purposes or while under direct adult supervision in an appropriate educational program, and we would continue to allow such activities as it relates to ammunition. So a child who hunts or shoots skeet would still be able to participate in both activities after passage of this bill. The unlawful transfer of ammunition to a juvenile under this bill would be a Class III felony, the same as it is currently for the unlawful transfer of a firearm to a juvenile. The...it should be noted that under federal law a person cannot sell, deliver, or transfer a handgun or

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handgun ammunition to a person under the age of 18 under 18 U.S.C. 922. LB148 would also add that it is a violation of Section 28-1206 to be a felon or a prohibited person in possession of ammunition. A prohibited person would be a fugitive from justice, a person subject to a current and valid domestic violence protection order and is knowingly violating that protection order. Possession of ammunition by a convicted felon or prohibited person would be a Class ID felony, as it is currently, for the possession of a firearm. And that pretty well summarizes the bill, Mr. Vice Chair. [LB148]

SENATOR LATHROP: Okay. Any questions for Senator Ashford? I don't see any. Do you want to waive close? [LB148]

SENATOR ASHFORD: Yeah. [LB148]

SENATOR LATHROP: Okay, terrific. We will take the first proponent of LB148. [LB148]

DON KLEINE: Good afternoon. My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney and I'm here on behalf of the other Douglas County Attorney and the Nebraska County Attorneys Association as a proponent of LB148. LB148 is...mirrors, to some extent, the federal...current federal law that prohibits ammunition as well as a firearm in the possession of a prohibited person. And that's what we're talking about here. We're talking about either the sale to a juvenile or transfer to a juvenile that's not allowed under federal law and state law and the possession by a prohibited person. So if we have a situation where an individual is a prohibited person--a convicted felon--tosses the firearm but has the magazine with the ammunition in it in his pocket, he can be charged as a felon in possession or a prohibited person at that point in time. So, you know, the purpose of the ammunition is obviously for a firearm. So again, it seems to have that impact. And felons--a prohibited person--shouldn't have ammunition, as well as the firearm. With our gun violence the way it has been, I think this is an important law that needs to be amended to include ammunition. So we're in favor of this bill. I'd be happy to answer any questions. [LB148]

SENATOR LATHROP: Very good. Thanks, Don. Senator Chambers. [LB148]

SENATOR CHAMBERS: Transfer would mean sale, trade, or any other thing. [LB148]

DON KLEINE: Yeah, I think it...they said...that's the current law already, the transfer part of it. It just includes ammunition now, as well as the firearms. [LB148]

SENATOR CHAMBERS: Well, that's what I meant...when we apply it to ammunition. [LB148]

DON KLEINE: Yes. [LB148]

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SENATOR CHAMBERS: So a person...if we did not include ammunition, a person who's not allowed to have a firearm could have bags of ammunition that will be sold or given for the purpose of being used in a way that's not lawful. [LB148]

DON KLEINE: Exactly. [LB148]

SENATOR CHAMBERS: Okay. [LB148]

DON KLEINE: I mean, that's that...again, yeah. The person doesn't maybe have the firearm but they get clips or ammunition, all that kind of thing. [LB148]

SENATOR CHAMBERS: And, Mr. Kleine, just for full disclosure you know that I'm very concerned about juveniles, especially in my community, having guns, ammunition, access to guns, or providing access to other juveniles to guns. And I'm just stating, you know that's how I feel on this issue. [LB148]

DON KLEINE: You have been at the forefront of firearms and ammunition going to juveniles, and also the tracing of firearms to find out where those guns come from that end up in the hands of a juvenile. [LB148]

SENATOR CHAMBERS: And I'm just doing that so people will know in advance that I have a position on this, that I've made it known. So I don't come to this like an empty tablet and have to be persuaded. [LB148]

DON KLEINE: That's very true. [LB148]

SENATOR CHAMBERS: Okay, that's all that I have. [LB148]

SENATOR LATHROP: I do want to ask one question, Don. [LB148]

DON KLEINE: Sure. [LB148]

SENATOR LATHROP: You said that this mirrors federal law already? [LB148]

DON KLEINE: Yes. [LB148]

SENATOR LATHROP: So the federal statute has a prohibition against transferring guns? [LB148]

DON KLEINE: Ammunition as well as the firearm. [LB148]

SENATOR LATHROP: And so why do we need this? What benefit are we going to realize in Douglas County or in the state of Nebraska by having a statute that already

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mirrors federal law? [LB148]

DON KLEINE: Well, that's a good question but there's a lot of federal laws. They use their discretion very--I don't want to say--you know, they don't always prosecute everything. They kind of leave it up to the state level. There are only certain cases that the U.S. Attorney's Office will take. I think everyone is aware that probably 95 percent of crime is prosecuted by state and local county attorneys, not the federal government. And so they might have a federal law, but certainly I think we need a state law so that we can enact it ourselves--not be dependent on the federal government to prosecute those kinds of cases. [LB148]

SENATOR LATHROP: Okay, great. Thank you, I appreciate that answer. [LB148]

DON KLEINE: Sure. [LB148]

SENATOR LATHROP: I see no other questions. [LB148]

DON KLEINE: Thank you. [LB148]

SENATOR LATHROP: Thanks for coming down today. [LB148]

DON KLEINE: Sure. [LB148]

SENATOR LATHROP: Anyone else here in support of LB148? Anyone here to testify in opposition to LB148? [LB148]

JERRY SOUCIE: (Exhibit 3) Good afternoon, members of the committee, Senator Lathrop. I have some observations regarding this bill. [LB148]

SENATOR LATHROP: Why don't you give us your name first. [LB148]

JERRY SOUCIE: I'm sorry. Jerry Soucie, it's S-o-u-c-i-e, and I'm appearing here just as a private citizen and as a private attorney, not on behalf of any organization. I have some observations regarding what's kind of been happening over a number of years. And one of the problems I see with this bill is a continuation of getting away with something...a committee I was on several years with Senator Brashear regarding trying to reduce the levels of incarceration. My problem with this bill is you have possession of ammunition as a strict liability offense is a ID felony. What that means is that it's a mandatory minimum of three years. You cannot be placed on probation even if your felony was 40 years ago. You cannot be placed on probation, you get no good time if you go to prison, and you may not have been involved in any sort of intentional criminal activity whatsoever. It's strict liability. Second portion of that statute provides that if you're in a car and there is ammunition in the car, even if you didn't put it in that car,

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even if you didn't even know it was there, it is a prima facie case that you are a felon in possession of a firearm. You're going to prison for a mandatory minimum of three years--no good time, no parole, no nothing. Second thing I think you need to understand is that not all felons are created equal. There are different levels of felony. You get felony fourth offense DWI, you're treated the same as if your prior felony was for first degree sexual assault. Third, I think you need to understand that there will be disparate application of this statute throughout the state. It's going to be applied in Douglas County for the things that Don Kleine talked about when they're chasing somebody in north Omaha and he drops the gun and they find ammunition in the back of the car. But it's not going to be prosecuted out in Alliance, Nebraska, where Bob had a DWI fourth offense and they find ammunition in the back of his car when he goes out fishing with his buddy, John. It's not going to happen. The third thing...the fourth thing that's going to happen is this is an invitation...and I know in Douglas County you've had a problem in Douglas County with your CSI unit where they were planting evidence in cases. Think how easy...it's difficult for a police officer to do a throw-down gun. It is easy for a police officer to do a throw-down ammunition. It's untraceable, it's fallback. You're going to start now finding, if this bill passes, probable cause based...you know, I stopped the car. I was sort of suspicious. When I looked in the back seat, I thought I saw a round in the back of the seat--in the back seat. Therefore, I searched the whole car and I found X, Y, and Z. I think in this...you need to rethink how much we want to have these mandatory minimums because I think they're a horrible mistake. It costs \$36,000 per year. This bill costs \$160,000 every time there's an arrest if there's a conviction--\$160,000--without having any charges to the court, to the prosecution, the defense attorney. Thank you. [LB148]

SENATOR LATHROP: Very good. Thanks, Jerry. Are there any questions for Mr. Soucie? [LB148]

SENATOR DAVIS: You get this \$160,000 figure from a three-year sentence? [LB148]

JERRY SOUCIE: It's the VERA Institute. In fact, I'll provide a copy. That's a study they did of what it costs per year in Nebraska for incarceration. [LB148]

SENATOR CHAMBERS: A comment. [LB148]

SENATOR LATHROP: Senator Chambers. [LB148]

SENATOR CHAMBERS: Mr. Soucie, I made a very strong and forceful statement about being concerned about the issues being addressed here, but I feel even more strongly about the matters that you brought to our attention in connection with this bill. Sometimes an idea, if it were to be freestanding with some safeguards built into it, would have a different impact than when it's interwoven in existing legislation that already has penalties and so forth. So whereas I came here thinking this bill was pretty

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good, I have to be practical. I'm trying to get information on some shootings right now in Omaha where I think there was a throw down. I do not believe that a person who's had a lot of contact with the criminal justice system is going to be in the presence of two cops and they've got the drop on him and somehow he gets out a gun and he drops it on the ground. Then he dives for the gun, and both cops shoot him. And I'm supposed to swallow that? And like I say, I'm trying to get reports on it. So I've altered my position based on my knowledge of how Omaha police have done. I have worked with Mr. Kleine on some other matters where charges were brought against some black women, and it was clear from the evidence that they were the victims of the police. One had been cut and blood was on the side of the car, and the cop claimed that she got a cut when he had to take her to the ground. And there was no reason because it had to do with violation of a curfew at a park. I brought it to the chief. He wouldn't do anything. They wanted to charge the woman with some felony possession of controlled substances, but it was prescribed medicine for which she had doctor's prescription. So when we do involve the Omaha police, who to me basically are gangsters--yeah, I said and I meant it--and there have been cases where the chief has intervened to help some of them get away. One situation--and this is to show that I'm not just looking at this, but it provides a context which you said. There was an officer who heard...overheard others talking about planting drugs in the trash bags of some guy they were trying to get, and they couldn't get anything on him. So the officer who overheard it made the mistake of notifying his superiors. Well, to protect the ones who had been exposed, action was taken by the chief at a time when it's your word against this person's word. You say you heard them say this, they deny they said it. And in talking to different law enforcement people and reading, when there is a set of circumstances like that, they allow--because they're watching it--they allow it to play out to see if this is going to be done. I had even written to the district judges to ask them to convene a grand jury to look into this. I didn't even get a response. So I'm saying all that to indicate that you push the right buttons to make me look at this bill and in an entirely different way. I do not think that juveniles ought to have ammunition, guns, or anything else. But sometimes there is a bigger issue, and judgments and decisions have to be made where you weigh one thing against the other. And you have to come down on the side that you feel, with all the facts you have at your disposal, come down on the side that prevents a greater harm. So I will discuss this with my colleague, Senator Ashford, later on to see exactly what I'm going to do. [LB148]

JERRY SOUCIE: Senator, I don't want to come here with the idea that I'm pro ammunition in the hands of felons. But my concern is, is that when you set up a strict liability offense, without any criminal intent whatsoever, without any criminal knowledge, you make it a strict liability offense. And then you say, and if that happens, you're in a car with ammunition, you go to prison for three years--no good time. I don't think that's worth \$160,000 taxpayers' money. And that money, and in those prosecutions, are going to happen in Douglas County left and right. And everybody in the rest of the state of Nebraska is going to pay the cost of the incarceration for the people from Omaha. It's

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not going to be the other way around. And I think you're going to have a bill where Department of Corrections is going to ask for another \$5 million. Well, with these mandatory minimums, \$5 million is just a down payment. You're going to be looking at a lot more than that. Thank you. [LB148]

SENATOR CHAMBERS: And just one other point you made me think of. And...well, this bill was passed when I wasn't here. They made shooting from a vehicle a crime--I don't know if you have to be shooting at anybody--in Douglas County, but out in the country you can do that very same act. The very same danger will be created, but it's not a crime out there. So they do make distinctions in this Legislature. [LB148]

JERRY SOUCIE: Senator, on that bill--I've very familiar with that bill, very familiar. [LB148]

SENATOR ASHFORD: So are we, I think, Mr. Soucie. [LB148]

JERRY SOUCIE: I know. [LB148]

SENATOR ASHFORD: Thank you. [LB148]

JERRY SOUCIE: It was...it's a provision of the bill that was comprehensive. But in any event, I'm currently trying to figure out the disparate application. I'm searching for a white person who's been charged on that statute. It has been predominantly applied to black people. The statute applies to 1.8 percent of the territory of the state of Nebraska, captures 95 percent of the black population. Do I think it was intentionally, on the part of the Legislature, designed to be that way? No, but it was a Douglas County bill and that's the consequences. Thank you. [LB148]

SENATOR CHAMBERS: And that's all that I have. [LB148]

SENATOR LATHROP: Very good. Thanks, Jerry. Anyone else here in opposition to LB148? Anyone here in a neutral capacity? Senator Ashford waives close and that will close our hearing on LB148. It looks like we're on to LB128. That's a Coash? Okay. [LB148]

SENATOR ASHFORD: Senator Coash. [LB148]

SENATOR COASH: (Exhibits 13, 14) Thank you, Chairman Ashford. Good afternoon, fellow members of the Judiciary Committee. For the record, I am Colby Coash, C-o-a-s-h, representing District 27 here in Lincoln. Thank you for the opportunity to introduce LB128. LB128 creates the crime of disarming a police officer while in the performance of his or her duties. You may be surprised to know that in Nebraska disarming an officer is not classified as a crime. However, it is currently addressed

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through misdemeanor violations such as resisting arrest or obstruction of an officer. A misdemeanor charge is not appropriate for this level of threat incurred, not only by the officer but also by the general public, when someone disarms a police officer. These officers are trained in conflict resolution and work to maintain a level of calm regardless of the situation. However, when an officer is confronted, it is his or her duty to protect those around him or her while also gaining control of a dangerous situation. Undoubtedly, such a situation is made more difficult and unpredictable when an officer's weapon is taken. We would not be alone in enacting this type of crime. Ten other states agree: Alabama, Delaware, Florida, Indiana, Maryland, New Jersey, Pennsylvania, South Carolina, Vermont, Virginia, and Washington all provide for felony penalties for disarming police officers. I believe that penalties ought to reflect the crime, and I believe this bill accomplishes this. So I thank you for your time and your careful consideration of codifying this crime as indicated in the bill. I was surprised to learn from law enforcement about the prevalence of this particular act when I started to talk with our own sheriff here in our county, Sheriff Wagner, who I think is going to be here to explain how this can occur and how law enforcement reacts to it. And there are also some support letters, I think, being circulated by other law enforcement agencies. And with that, I'll answer any questions. [128]

SENATOR LATHROP: Senator Chambers. [LB128]

SENATOR CHAMBERS: Senator Coash, did Attorney General Jon Bruning ask you to bring this bill? [LB128]

SENATOR COASH: Yes, I have been working with the Attorney General's Office on this bill. [LB128]

SENATOR CHAMBERS: Did he mention specific cases to you in persuading you to bring this bill? [LB128]

SENATOR COASH: He did not, but we do have a representative of the Attorney General's Office that may be able to speak more to that. [LB128]

SENATOR CHAMBERS: I couldn't understand you. [LB128]

SENATOR COASH: The Attorney General did not mention any specific cases. I got those cases from my own law enforcement representative here in Lancaster County. Sheriff Wagner came and talked to me about those cases. But we do have a representative of the Attorney General's Office that may be able to answer that question for you. [LB128]

SENATOR CHAMBERS: You're not a lawyer, are you? [LB128]

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SENATOR COASH: I'm not. [LB128]

SENATOR CHAMBERS: Do you...based on your knowledge as a layman, is the crime of attempted murder punished the same way as murder? [LB128]

SENATOR COASH: No. [LB128]

SENATOR CHAMBERS: You make an attempt to do something the same level of seriousness as doing it in this bill, don't you? [LB128]

SENATOR COASH: Yes. [LB128]

SENATOR CHAMBERS: So you may as well do it instead of just attempting to do it. Like, if you get the thought and then you say, oh-oh, I may as well take his gun. Huh. That could happen, couldn't it? [LB128]

SENATOR COASH: It could. [LB128]

SENATOR CHAMBERS: Now, as a layperson, does it seem rational to you to make the attempt to do something identical to actually doing it? [LB128]

SENATOR COASH: Well, Senator Chambers, I think that the... [LB128]

SENATOR CHAMBERS: No, I'd like an answer. Do you think that they should be on the same level? [LB128]

SENATOR COASH: No. [LB128]

SENATOR CHAMBERS: If I swing at you and you duck, should I be punished for that the same way I would be punished if I hit you in the jaw and broke your teeth out? [LB128]

SENATOR COASH: I think that's appropriate. [LB128]

SENATOR CHAMBERS: Are these things that a lawyer should maybe think of in drafting legislation? Or did you come up with the language? [LB128]

SENATOR COASH: I was assisted with the language. [LB128]

SENATOR CHAMBERS: Say it again. [LB128]

SENATOR COASH: I was assisted with the language, and I agreed to carry that as I... [LB128]

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SENATOR CHAMBERS: You assisted in presenting the language? [LB128]

SENATOR COASH: I reviewed the language and I had assistance in preparing the language. [LB128]

SENATOR CHAMBERS: But you didn't formulate this bill in these terms? [LB128]

SENATOR COASH: No, no. [LB128]

SENATOR CHAMBERS: Did the Attorney General explain why it ought to be a felony? [LB128]

SENATOR COASH: In my discussions with the Attorney General's Office, we discussed the level of crime that this...or the level of punishment that this crime might entail, and came to the conclusion that the Class III felony was appropriate. [LB128]

SENATOR CHAMBERS: Now, if somebody does actually disarm a police officer, do you think that's a very serious offense? [LB128]

SENATOR COASH: I do. [LB128]

SENATOR CHAMBERS: Do you think it's serious enough to warrant 20 years in prison? [LB128]

SENATOR COASH: Well, Senator Chambers, the penalty does allow for that. [LB128]

SENATOR CHAMBERS: I'm asking for your opinion. Do you think it should warrant 20 years in prison? [LB128]

SENATOR COASH: It could in some cases. [LB128]

SENATOR CHAMBERS: When should it, in your opinion, because you brought the bill? And I'm sure the Attorney General explained all these things to somebody he was asking to bring a bill for him when he knew that the person bringing it would be questioned. What did the Attorney General tell you were the instances when 20 years should be the sentence? Or didn't he do that? [LB128]

SENATOR COASH: We did not discuss that, Senator Chambers. [LB128]

SENATOR CHAMBERS: Well, did he tell you when the identical disarming is so lacking in seriousness that it should be one year? [LB128]

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SENATOR COASH: No. [LB128]

SENATOR CHAMBERS: Then do you think when you disarm a cop there could be such a difference in that disarming that it could be only 1 year in seriousness or 20 years in seriousness, or is that too wide a variation for this kind of act, in your opinion? [LB128]

SENATOR COASH: I don't think it's too wide. I trust our judicial system to weigh those facts with all the other charges and make their ruling based on the incident. [LB128]

SENATOR CHAMBERS: There's nothing here about any aggravating circumstance that would make it 20 years rather than 1 year, is there? [LB128]

SENATOR COASH: No. [LB128]

SENATOR CHAMBERS: And if a judge said one year, then that would be just, in your opinion, no matter how the disarming occurred? [LB128]

SENATOR COASH: Yes. [LB128]

SENATOR CHAMBERS: Correct? [LB128]

SENATOR COASH: Yes. [LB128]

SENATOR CHAMBERS: And if the judge said 20 years that would be just, in your opinion, no matter how the disarming occurred. Or hadn't you thought about these things? [LB128]

SENATOR COASH: Didn't think about that, Senator. [LB128]

SENATOR CHAMBERS: Is there anything in this language which, based on the way you read it, which indicates that the person must know that the individual is a peace officer? [LB128]

SENATOR COASH: I don't see any language that indicates that the offender would have to know that it was an officer. [LB128]

SENATOR CHAMBERS: Say it again. [LB128]

SENATOR COASH: There is no language in this bill that would indicate that the offender had to have knowledge that it was a peace officer. [LB128]

SENATOR CHAMBERS: Right. So it could be a plain clothes cop... [LB128]

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SENATOR COASH: That's correct. [LB128]

SENATOR CHAMBERS: ...engaging in his or her duties... [LB128]

SENATOR COASH: Yes. [LB128]

SENATOR CHAMBERS: ...but the person doesn't know it's a cop. And the cop could approach this person with a gun, and the person could disarm that plain clothes cop and would be guilty, nevertheless, of...see, what it talks about, the "intentionally" and "knowingly" applies to the removal. So if one of these cops--and they have them in my community--they dress in a scruffy manner. They approach you without saying, I'm a cop. And he pulls a gun, and I'm capable of disarming him. Then I've committed a felony, haven't I? [LB128]

SENATOR COASH: Yes. [LB128]

SENATOR CHAMBERS: Do you think that's just or don't you know how the law is enforced in north Omaha? Or doesn't it make you any difference? [LB128]

SENATOR COASH: It...no. [LB128]

SENATOR CHAMBERS: Does this bill seem, in the way it's written, as reasonable to you now as it did when the Attorney General foisted it on you? [LB128]

SENATOR COASH: It looks different. [LB128]

SENATOR CHAMBERS: It seems reasonable? [LB128]

SENATOR COASH: I still think there is a...there is still a need to have a separate penalty for taking a gun from a police officer. [LB128]

SENATOR CHAMBERS: That's not what I'm asking you. I'm creating a circumstance where a gun is taken from somebody who is a police officer. See, there have been black police officers in plain clothes shot by white police officers in uniform. And they said, we didn't know he was a cop, so they were exonerated. So now, if this scruffy white guy approaches me with a gun and I take it from him or I attempt to take it from him, should I be charged with a felony? How do I know one scruffy white guy from another? Or should I presume that every scruffy white guy who pulls a gun on me is a cop, and I'd better let him have his way with me? Otherwise, I'll be committing a felony. Is that just and fair in your mind? [LB128]

SENATOR COASH: No. [LB128]

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SENATOR CHAMBERS: Let's make it easier. If he's in the white community and he approaches a young white man or woman who knows how to take care of himself or herself, and doesn't identify himself as a cop, or even if he does, there are instances now that alarm the police of individuals masquerading as police officers. So you don't really know what you're dealing with. Does this bill, as written, seem reasonable to you? And here's the way...I will ask the question a different way. Would you vote for this bill the way it's written right now? [LB128]

SENATOR COASH: I'm going to defer on that, Senator Chambers. [LB128]

SENATOR CHAMBERS: I didn't understand you. [LB128]

SENATOR COASH: I'm going to defer on that. I still believe that there is a need to have a separate offense for disarming a police officer. [LB128]

SENATOR CHAMBERS: Senator Coash, when I speak is it unclear what I'm asking? In other words, don't I speak English clearly? [LB128]

SENATOR COASH: Yes, you do. [LB128]

SENATOR CHAMBERS: Okay, so here's the question. You brought this bill. At the time you brought it, you thought it was reasonable, you thought it was necessary. And that was what lead you to bring it. In view of our discussion, would you vote for this bill right now in the form that it is in right now? [LB128]

SENATOR COASH: Senator Chambers, I'm not prepared to answer that question for you because I would like to learn a little bit more about issues that you brought up, such as an ununiformed officer. [LB128]

SENATOR CHAMBERS: That's all that I have. [LB128]

SENATOR COASH: Thank you. [LB128]

SENATOR ASHFORD: Thank you, Senator Chambers. Any other questions? Thanks. Do you plan on closing, Senator Coash? [LB128]

SENATOR COASH: I'll reserve my right and we'll see how it goes. [LB128]

SENATOR ASHFORD: Okay, thank you. Any proponents? Come on over. [LB128]

JOHN FREUDENBERG: Good afternoon, Chairman Ashford and members of the Judicial Committee. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the Criminal Bureau Chief of the Nebraska Attorney General's Office. I'm here in support of

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LB128 today. This bill makes intentionally and knowingly disarming or attempting to disarm a peace officer while in the performance of his or her duties a Class III felony. Currently the act of disarming a peace officer is inadequately addressed by charges like resisting arrest and obstructing an officer, each of which are Class I misdemeanors. In 11 states it's a felony to disarm an officer while in the performance of their duties. There are members of law enforcement who were scheduled to be here today who I do not see here, that were going to speak to specific instances. They may have to submit information to you at a later time. I'm hoping that they make it, however, I'm here to answer any questions that I am able to. Thank you. [LB128]

SENATOR ASHFORD: Any questions of John? Yes, Senator Chambers. [LB128]

SENATOR CHAMBERS: Would you pronounce your name again? Is it Fridenberg (phonetically)? [LB128]

JOHN FREUDENBERG: It's Fridenberg (phonetically), Senator. [LB128]

SENATOR CHAMBERS: Fridenberg (phonetically)? Okay. [LB128]

JOHN FREUDENBERG: Fridenberg (phonetically), thank you. [LB128]

SENATOR CHAMBERS: Okay, because when you spelled it I wasn't sure. Okay. [LB128]

JOHN FREUDENBERG: It's mispronounced by the way it's spelled. So... [LB128]

SENATOR CHAMBERS: Okay. Mr. Freudenberg, did you draft this language? [LB128]

JOHN FREUDENBERG: I did assist in drafting it, Senator. [LB128]

SENATOR CHAMBERS: Where in the bill does it say that the person must know that the one being disarmed is a peace officer? [LB128]

JOHN FREUDENBERG: I interpret it by the way the "knowingly" and "intentionally" was in there. However, when you raised that with the senator, I did see ambiguity to it. I do agree that it needs to be someone who is known. [LB128]

SENATOR CHAMBERS: He pulled my fangs. You... [LB128]

JOHN FREUDENBERG: I apologize, Senator. I just agreed. [LB128]

SENATOR CHAMBERS: Well, the Attorney General, if he's listening, he's going to give you a raise. He's going to say, I didn't even know I should handle it that way myself. No,

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but in all seriousness, I'm opposed to the bill. I'm opposed to it because cops can, in the same way they can throw down a gun, in the same way they can throw down a piece of ammunition, all the cop has to do is say, he tried to take my gun. And you know why I say that and it would work? There is a video which was shown several times on television of Omaha police officers. About six of them piled on top of a man and another police officer, female, was kicking him--kicking him. And you know why she said she was justified? That he was trying to take a knife out of her pocket, and an arbitrator accepted that as a justification. Now she's standing up, he's lying on the ground. She's kicking him, and she said--the arbitrator quoted her--he's trying to take a gun...I mean, a knife out of my pocket. And his arms were pinned to the ground. So now if, with that video--which outraged everybody who saw it, even some prosecutors who refused to file charges against the cops--all a cop has to do if the gun is not taken is say that the attempt was made--and I'm going to frame that as a question--if the gun is not taken, how could the charge of attempting to take an officer's gun be established? [LB128]

JOHN FREUDENBERG: It would be established through testimony. [LB128]

SENATOR CHAMBERS: And who, in your experience, are jurors and judges likely to believe, the cop or the one who is accused and will testify directly contrary to what the cop said? [LB128]

JOHN FREUDENBERG: I would say in the majority of cases it's the officer. [LB128]

SENATOR CHAMBERS: I'm very concerned about giving cops another way to do, in my community, things that they've been doing all the time, except that this makes it even easier. This ups the ante to a felony. And whereas they are not always using this kind of an allegation now, they're given a justification in their mind because there could be an individual they've been trying to arrest. They will not try to plant drugs in his trash now because that's been taken off the table. They can stop the person and say it was for a traffic stop. This person resembled an individual we had a report on who tried to commit a robbery. When we had him outside the car, he called me some names and told me what he would do to me. And being a professional officer and trained, his words didn't mean anything to me. Then he approached me in a threatening manner. And when I told him, back off or I'll put you under arrest, then he reached for me with one hand, and reached for my gun with the other hand and tried to take my gun. Scenarios like that have gotten people in my community put in jail. I know because I've witnessed it. Now, I'm opposed to your bill. But I'm not going to ask you a series of questions because you acknowledge that even if this is something you'd push for, there could be a way to make the language more precise in saying what you want to say, even though I think you would still want the attempt to disarm a cop to have the same level of culpability as actually disarming the cop. [LB128]

JOHN FREUDENBERG: That is correct, Senator. [LB128]

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SENATOR CHAMBERS: And the only way to establish an attempt is through testimony--the cop's word against the word of the accused, correct? [LB128]

JOHN FREUDENBERG: In the absence of other witnesses or other evidence, correct. [LB128]

SENATOR CHAMBERS: Okay. And that's all that I have, thank you. [LB128]

JOHN FREUDENBERG: Thank you. [LB128]

SENATOR ASHFORD: Yes, Senator Seiler. [LB128]

SENATOR SEILER: Thank you, Senator. Do you think this bill is wide enough to prohibit someone from taking a weapon from the police officer's car? Or is this just off his person only? [LB128]

JOHN FREUDENBERG: I believe this is off his person only. [LB128]

SENATOR SEILER: Okay. [LB128]

SENATOR ASHFORD: Yes, Senator Davis. [LB128]

SENATOR DAVIS: Mr. Freudenberg, can you...because I'm new to the committee and unfamiliar with the process. Can you tell me what other Class III felonies might be? [LB128]

JOHN FREUDENBERG: The reason a Class III felony was selected here is because this is equivalent to a second-degree assault of a use of a weapon to commit an assault. And that's why that was selected, because that is the threat level that this raises it to when that gun is brought into play if it's not been brought into play already. So that was the thinking behind making it a Class III felony. [LB128]

SENATOR DAVIS: And can you give me some examples of some Class III felonies? [LB128]

JOHN FREUDENBERG: Class III--second-degree assault--that's when someone uses a weapon to assault someone else. There are some high-level DUIs, multiple offense DUIs that get there. But a Class III felony is a 1-to-20-year possibility with also additional \$25,000 fine being a possibility. [LB128]

SENATOR DAVIS: Okay, thank you. [LB128]

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SENATOR ASHFORD: Okay. I don't see any other questions, John. Thank you. [LB128]

JOHN FREUDENBERG: And I'm happy to say Sheriff Wagner was able to make it. So thank you. [LB128]

SENATOR ASHFORD: Okay, I see him here. Welcome back, Sheriff. [LB128]

TERRY WAGNER: Thank you, Senator. It's great to be back. Senator Ashford, members of the committee. Welcome back, Senator Chambers, it's nice to see you. I am here to support LB128, and I'm here on behalf of both myself and the Nebraska Sheriffs' Association. We support this bill because there is nothing in statute right now that penalizes somebody from disarming a law enforcement officer. I can speak from this firsthand. I know what it's like when somebody does try to remove your weapon from its holster. And with that, I would just tell you that we support this bill. I hope you forward it to the floor, and I'd be glad to answer any questions that Senator Chambers may have. [LB128]

SENATOR CHAMBERS: Sheriff, welcome. [LB128]

SENATOR ASHFORD: Is that it? That was less than 20 seconds. Senator Chambers, do you have a question? [LB128]

SENATOR CHAMBERS: Yeah, one or two, because you're representing an organization, so I'm going to ask you some of the questions that I presented to my colleague. Did your organization review the language of this bill? [LB128]

TERRY WAGNER: No. [LB128]

SENATOR CHAMBERS: Did you review it? [LB128]

TERRY WAGNER: I did. [LB128]

SENATOR CHAMBERS: Do you see anything in this bill that says the person must know that the one being disarmed is a peace officer? [LB128]

TERRY WAGNER: Well, "knowingly" and "in the performance of their duties" would seem to me that they would know they're a law enforcement officer and know that they're in the performance of their duties. [LB128]

SENATOR CHAMBERS: But there are two things here that we're looking at, "intentionally" and "knowingly" removing or "attempting" to remove. That refers to the removal. [LB128]

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TERRY WAGNER: Right. [LB128]

SENATOR CHAMBERS: It doesn't say, as some bills that I've worked on when I was here in the past--one had to do with the death penalty, I think, making doing something to a police officer an aggravating circumstances...an aggravating circumstance--and I insisted that the person know that this is a police officer and know that the police officer is performing his or her duties. Now the example that I gave related to police officers who operate in what they call an undercover capacity. In Omaha they're on the gang unit or something. And they don't dress like you. They don't even dress like I do. They're scruffy, you don't know what they are. If a person dressed like that put a gun on me and I either tried to disarm him or did disarm him and he's a cop, then I'm guilty of a felony under this bill. Do you think that's appropriate? [LB128]

TERRY WAGNER: Well, I think that the officer needs to either announce who they are or have identification visible. I was trying to think of the bill or the statute that I saw recently where even a plain clothes--whether it be a detective in a suit or whether it be a gang unit officer or a narcotics officer dressed in different attire--that when it comes to that point especially...it might be the resisting arrest statutes. It sounds like language you probably had a hand in introducing, that they have to identify themselves clearly that they're a law enforcement officer at the time or the person won't be guilty of resisting arrest. [LB128]

SENATOR CHAMBERS: And how would we know, if this matter is before a court, that this person identified himself as a police officer? If I'm the victim and I say, no, he didn't, and the guy says, well, yes, I did, which of the two of us is the judge going to believe if it's tried to the judge or the jury going to believe if it's tried to a jury? I'm a black man and he's a white man. Which one are they going to believe, in your experience, in most circumstances? [LB128]

TERRY WAGNER: Well, I'd like to think that there's going to be some impartial witnesses that can say yes or no. [LB128]

SENATOR CHAMBERS: No witnesses--him and me? [LB128]

TERRY WAGNER: No witnesses. You know, I don't know. [LB128]

SENATOR CHAMBERS: How long have you been a sheriff? [LB128]

TERRY WAGNER: I've been a sheriff 18 years. [LB128]

SENATOR CHAMBERS: And you don't know how those things...okay, then, I'll let that go on that. How do I know that the officer is engaged in the performance of his or her duties? How would I know that? Or is it just something that is a fact, and whether I know

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it or not, then I'm guilty? [LB128]

TERRY WAGNER: Well, I would say anybody who is being arrested if, you know, obviously the officer is going to be carrying handcuffs. They're going to say, you know, you're under arrest. They're going to have identification, and they're going to effect that, you know, with the handcuffs. I can't imagine that a citizen would walk up to you and try to handcuff you, just for fun. [LB128]

SENATOR CHAMBERS: Oh, you don't? Have you heard about these people who masquerade as cops and they even have lights on their cars and pull people over? [LB128]

TERRY WAGNER: Well, okay. That's true, you're right. [LB128]

SENATOR CHAMBERS: Okay. [LB128]

TERRY WAGNER: But I haven't heard of them actually handcuffing somebody. But I have heard of them pulling people over, impersonating an officer in that manner. [LB128]

SENATOR CHAMBERS: Is everybody who's placed under arrest handcuffed? [LB128]

TERRY WAGNER: According to our policy, yes, sir. [LB128]

SENATOR CHAMBERS: Are they as a matter of fact? [LB128]

TERRY WAGNER: I believe they are. [LB128]

SENATOR CHAMBERS: But you don't know for sure. [LB128]

TERRY WAGNER: Well, they better be. I mean... [LB128]

SENATOR CHAMBERS: But you don't know for sure. [LB128]

TERRY WAGNER: I don't, no. We have a policy that says everybody who's arrested shall be handcuffed. [LB128]

SENATOR CHAMBERS: Do you have a policy for disciplining a person who does not follow that handcuffing? [LB128]

TERRY WAGNER: Yes, sir. [LB128]

SENATOR CHAMBERS: Why do you have that policy if you know that they're always

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going to handcuff a person? You have that policy because you... [LB128]

TERRY WAGNER: It reinforces the policy as important and that they need to follow it. [LB128]

SENATOR CHAMBERS: But you know that some people may not do that, correct? [LB128]

TERRY WAGNER: Well, we have penalties for every policy in our manual. [LB128]

SENATOR CHAMBERS: Are there officers with the sheriff's department who moonlight as security guards? [LB128]

TERRY WAGNER: Yes, sir. [LB128]

SENATOR CHAMBERS: Are they allowed to wear their uniforms? [LB128]

TERRY WAGNER: Yes, they are. [LB128]

SENATOR CHAMBERS: Are they performing their duties? And it doesn't say, for a peace officer engaged in the performance of his or her duties as a peace officer. This person serving as the security guard is engaged in the performance of his or her duties as a security guard, correct? [LB128]

TERRY WAGNER: Yes and no. [LB128]

SENATOR CHAMBERS: Based on the language here, what...and now my next question. [LB128]

TERRY WAGNER: Okay. [LB128]

SENATOR CHAMBERS: You would want this bill to apply even if the person is functioning as a security guard and not as a law enforcement or peace officer, wouldn't you? [LB128]

TERRY WAGNER: I believe that it does. [LB128]

SENATOR CHAMBERS: Huh? [LB128]

TERRY WAGNER: I believe that it does. [LB128]

SENATOR CHAMBERS: Is that person a peace officer even while serving as a security guard in the employ of a private individual? [LB128]

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TERRY WAGNER: When they invoke the authority of their office and enforce the laws of the state, then they revert back to being a law enforcement officer. They revert back to being on duty in their official capacity. I mean, that's been held true in workmen's comp claims where an off-duty officer has attempted to effect an arrest and gets hurt. In that case, and if their employer doesn't cover them with workers' comp, we do because they have reverted back to their official capacity in performing that task. [LB128]

SENATOR CHAMBERS: So the person does not have to be performing duties as a peace officer for this to work, and that broadens the scope now of the bill in its application, doesn't it? [LB128]

TERRY WAGNER: I think you misunderstood me. Once...if a... [LB128]

SENATOR CHAMBERS: Let me say it a different way. [LB128]

TERRY WAGNER: Okay. [LB128]

SENATOR CHAMBERS: When that person is on duty--and now I'm going to deal just with the uniformed officers to make the point simple, then I will try to apply it a different way--when that person is in uniform and patrolling as a traffic officer or whatever, the duties being performed are those reposed or imposed on him or her in his or her capacity as a peace officer--a sworn officer with authority to make arrests, to resort to deadly force if necessary. That's...those are the duties and the powers that that person would have while functioning as a peace officer, isn't that true? [LB128]

TERRY WAGNER: Yes. [LB128]

SENATOR CHAMBERS: Now when that person becomes a security guard, that person, while serving as a security guard, is not at the same time functioning as a peace officer, is he or she? [LB128]

TERRY WAGNER: Yes, they are. [LB128]

SENATOR CHAMBERS: Oh, so then they can have a double role of being a security guard and a peace officer at the same time? [LB128]

TERRY WAGNER: No. I think there's a fine line that defines one or the other. In our experience--and I'll use the workmen's comp claim example where a deputy is working off duty for a private employer--when they go to enforce a law then they have, in fact, become on duty and, in fact, are acting in an official capacity and, therefore, our workmen's comp covers them at that point. So it goes...I think there's a fine line between their private employment as a security guard to when they become an official

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law enforcement officer in the performance of their duties. [LB128]

SENATOR CHAMBERS: So then the term "rent-a-cop" is true. You are renting to this private person all the power and authority of a police officer when you allow him or her to be a security guard for a private operation. [LB128]

TERRY WAGNER: That's correct. [LB128]

SENATOR CHAMBERS: You are renting a cop to that person. [LB128]

TERRY WAGNER: Yes, sir. [LB128]

SENATOR CHAMBERS: Do you feel that this bill, drafted as it is, is good legislation where it doesn't say that you have to know that the person is a police officer? It doesn't say that the duties being performed are the duties of that person as a police officer. They could be the duties of a security guard or anything. This could happen while a person's in his yard in his T-shirt, couldn't they? Because his duties that his wife imposed on him is to go cut the grass, and he's cutting the grass. But since everybody likes to have guns now, he's got a gun strapped to him or under his shirt. And somebody comes up and says something he doesn't like so he whips out the gun. And this person is shocked and is trained and automatically reacts and takes the gun from him. Then that person committed a felony, didn't he? Because that person, as a cop, is on duty 24 hours a day, huh? [LB128]

TERRY WAGNER: Well, not if he's mowing the lawn. And if you're saying that the duties his wife imposes upon him are the duties according to statute, I would disagree. [LB128]

SENATOR CHAMBERS: So then he's not a cop while he's cutting his grass. [LB128]

TERRY WAGNER: I would not consider that official duties. [LB128]

SENATOR CHAMBERS: And when he...if he pulled a gun on me in that situation and I took it from him, he's not covered by this and I'm not guilty of a felony, am I? [LB128]

TERRY WAGNER: I wouldn't say, no. [LB128]

SENATOR CHAMBERS: Suppose I know he's a cop but he's cutting his grass and I take his gun away from him, and I know he's a cop. Then I'm not covered by this either, am I, because he's not performing his duties? [LB128]

TERRY WAGNER: I would not guess, no. [LB128]

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SENATOR CHAMBERS: Now if he's one of these gang cops and he's dressed in the manner that I described, there are no witnesses and he pulled a gun on me and I didn't even take the gun, but he arrests me and he couldn't get me on anything else so in his report he says, Chambers tried to take my gun, and a prosecutor charges me the way the cop accused me, and we're standing before the judge, the only evidence we have is his testimony and my testimony. And he can put me in jail for 20 years, can't he, by what he says? And you know, Sheriff. If you don't know it consciously in your mind, I know what you know deep down in your mind if you think about it, that if it's a black guy saying one thing and a white cop saying something else, the judge and the jury are going to accept what the white cop says. I know that. And if you don't know it, talk to some of your colleagues. If what I say is true, do you think that the mere word of a cop should be able to send me to jail for 20 years? I didn't get his gun. He didn't accuse me of interfering with an officer. All I tried to do, based on what he said, was take his gun. Because now he doesn't have to make the pretextual claim of me interfering with an officer disturbing the peace, it's a freestanding, independent offense if I tried to take his gun. So now, why would he accuse me with disturbing the peace which is a misdemeanor, interfering with an officer which is a misdemeanor, disobeying a lawful order, when all he has to do is say, he tried to take my gun? And he has a better chance of getting me on that because the only thing involved is his word against mine. If he says that I disturbed the peace, he's going to have to establish what was going on at that time and what I did was, in fact, a violation of the law. If he says I interfered with an officer, he's going to have to establish that he was carrying out the duties of an officer and I knew he was an officer. But with this, I don't have to know he's a cop. He doesn't have to be carrying out duties as a cop. All he has to do is say I tried to take his gun and he is a cop. And that's all that's needed, and I can be convicted and sentenced to jail for 20 years. I'm not going to ask you any more questions, but I hate this bill and I hate all it stands for. And I hate the way these kind of things corrupt the concept of justice in this society because I know what it means when it happens to us. And if I, who is elected to represent a constituency, will not speak out at the time we are enacting laws which I know when they are applied how they are going to be applied to us, I'm not doing what I took an oath on that first day of the Legislature to do. And that's to uphold the law and the constitution. And I don't see anywhere in any decent law that says an innocent person ought to be sent to jail on the basis of a lie, where the constitution says a law is valid and in compliance with justice and what is right and the democratic system of government when the word of a lying cop can send me to jail for 20 years. You might get your bill, but they better have 33 votes, not only on this one, but every bill that comes after it. And, Sheriff, you and I have talked on different issues so I hope you know that this is not directed at you as an individual. I started by saying you're representing an organization, remember? [LB128]

TERRY WAGNER: Right. [LB128]

SENATOR CHAMBERS: So I'm asking you questions and presenting this in that

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context. But if, if anything I've said has offended you or makes you think that you were treated harshly, that's what you get paid for. [LB128]

TERRY WAGNER: Senator, I think for the 18 years I've been sheriff I probably testified before you every year of those 18 years and so I would expect not much less. [LB128]

SENATOR CHAMBERS: And you know that some things affect me more deeply than others. [LB128]

TERRY WAGNER: And I know it's not personal, it's business. [LB128]

SENATOR CHAMBERS: Okay. And that's all that I have. [LB128]

TERRY WAGNER: Okay. [LB128]

SENATOR ASHFORD: Thanks, Sheriff. I think that should conclude this portion of the hearing... [LB128]

TERRY WAGNER: Thank you, appreciate it. [LB128]

SENATOR ASHFORD: ...until the next proponent comes up. Doctor. [LB128]

BRYAN VAN DEUN: Bryan Van Deun, V-a-n D-e-u-n. I am here as a private citizen. I am the father of a senior peace officer in the federal service, and I have a number of friends who are former law enforcement officers with whom I hunt and fish and we get to talk about situations that they've had. And I would like to support this bill in the sense that there are many cases where my son and my friends have told me about situations that have come up where there was no regard for their safety, and they did have situations where people tried to disarm them. And I don't think that's a misdemeanor. I don't have any legal training. I was not a law enforcement officer myself. I am just talking to you as a private citizen. But I think we need to protect the men and women who protect us, and that's why I think some form of this bill...I don't want to say anything about the wording of the bill, but some form of this bill would be very beneficial to the people who protect us. [LB128]

SENATOR ASHFORD: Senator Chambers. [LB128]

SENATOR CHAMBERS: Doctor, first, are you a medical doctor or an academic? [LB128]

BRYAN VAN DEUN: I am not, I'm a Ph.D.-type doctor. [LB128]

SENATOR CHAMBERS: Okay. Doctor, you are here as a father speaking on behalf of

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your son, and I understand that. And you said, protect the people who protect us. That "us" does not include my people. We don't see cops as protectors. We see them... [LB128]

BRYAN VAN DEUN: Well, you should see who my daughter-in-law is, sir. [LB128]

SENATOR CHAMBERS: We see. I'm telling you... [LB128]

BRYAN VAN DEUN: My daughter-in-law is one of your people. She is my people. [LB128]

SENATOR CHAMBERS: Well, Doctor, I'm giving you what my constituency sees and what I have experienced. Just to give you one example, when I used to work at the barbershop, there's a bus stop in front of the barbershop. A cop parked in the bus stop. An elderly black lady approached his car and asked, does the bus still stop here? And I looked at it. And I looked at the way he looked at that lady. So I got a piece of paper and a pencil and you know what happened? And I've got the transcript. He arrested me. And when we were in court--and I testified--when we were in court he had to establish that I interfered with an officer. And first of all, he couldn't show any duties that he was undertaking. But you know what he said was the reason for him arresting me? Because I came out with a pencil and a paper and was writing "in an investigating manner," that I was smart, that I was cocky and, therefore, he arrested me. Guess what the judge did? He dismissed the charges. That was one of your people who arrested me. Another time, a white man came to the barbershop--you started it; I was making my statement and you interrupted me so now I'm finishing it--he came on the steps of the barbershop, and he was not allowed to come in because he was heading the campaign of George Wallace. He knew I worked at the barbershop, so he went downtown and swore out a complaint and said that when he came on the step I charged from the barbershop, from inside, punched him in his chest, and knocked him off the step. And you know what the evidence showed? That at the day and time that he said, first of all, he didn't ever come on the step of the barbershop. He didn't get that far. He was told, you can't come in here. I was at home working on a project known as Model Cities that the mayor of Omaha had hired me to work on. It was established by facts that that's what I was doing. And you know who placed me under arrest? A white cop on the word of this guy who was known to be George Wallace's man. And you know what the judge did again? He dismissed the charges. I know of other cases where people have been treated in a very insulting way. On Mother's Day--not this year--there were two women, middle-aged women, in a car. A cop had pulled up beside them and pulled them over. And he was giving them the blues, and I could tell that by the way they looked, so I intervened. And I knew he'd put me in jail, but here are two middle-aged black women on Mother's Day, which is a Sunday, going to church. And this white cop pulled them over and he was so wrong, and there would have been two witnesses against him, that when he saw me coming then he went back to his cruiser and drove off. I said, what happened? And they

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told me the kind of things he was saying to them, and how he stopped them, and this is his territory, and he can do what he wants to. Now you don't have to believe that what I'm saying is true, but I know what happens in my community. So in the same way you're going to speak for your son who could carry a gun, who could use that gun to kill people, but nevertheless you defend him, I'm going to defend the young kids, the middle-aged women, and the others who are set upon by these vicious cops in Omaha, and even when they're shown on a video using Tasers, kicking, and beating, and six cops on top of him, be found not to have done anything wrong. It is established when I was working in the barbershop that a vehicle that was described by witnesses as an undercover police cop shot the windows out in the barbershop, and I filed a federal complaint. And I can establish this from Freedom of Information Act disclosures made to me. J. Edgar Hoover had me under much surveillance, which I knew. And you know what the conclusion was? Since this is the subject Ernest W. Chambers and mentioned the number behind my name, there will be no additional investigation because it cannot be established that this occurred with an intent to violate his civil rights. So shooting out the window where I worked was not considered an attempt to violate my civil rights. So I have specifics that I can give also. But I'm looking at you. Remember what I said, "as a father defending his son," and parents will defend their children no matter how old they are, because they may cease to be little children but they're still ours as long as they live and we live. So I want you to understand that I'm listening to what you're saying from the standpoint that you're saying it. And to be frank about it, I don't care whether anybody in this room believes a word that I say, but on this side of the table there are things that I can do. And I will do all of it under the rules. And I don't use salty language. But if this comes out on the floor as I stated, they better have 33 votes for this and every other bill they present because I don't carry guns. I'm not armed. I don't bother anybody. And I'll play by the rules, and the rules give me a way to fight back against racism, unjust laws whether ingenuous or disingenuous, whether brought by the Attorney General, the Governor, the sheriffs, the police, any of them. I have no fear of them. I have no regard for them. I have no respect for them when they act outside of the oath that they took. And this bill encourages cops to lie. And you probably don't think they lie, and I know they do. And you know how I can tell a cop is lying--and I'm going to state the principle in my community based on our experiences--is his mouth moving? Yes. Well, he's lying. Now I don't believe that, because I think they can lie with body language too. That's all that I have. [LB128]

SENATOR ASHFORD: Okay. Thank you, Senator Chambers. Any other comments or questions? Thanks, Doctor. Don. [LB128]

DON KLEINE: Yes. Don Kleine, K-I-e-i-n-e, Douglas County Attorney. I'm here as a proponent on behalf of the Nebraska County Attorneys Association as their representative in support of this legislation with regards to LB128. And I'd be happy to answer any questions. [LB128]

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SENATOR ASHFORD: Thanks, Don. Any questions by any of the committee members? [LB128]

SENATOR CHAMBERS: Senator...I meant...excuse me. [LB128]

SENATOR ASHFORD: Oh. No, Senator Chambers. [LB128]

SENATOR CHAMBERS: No. I was going to say county attorney, I meant, not senator. When you said "happy," was that a term of art or you actually are happy to answer questions? [LB128]

DON KLEINE: I'm very happy to answer any question you have, Senator. You know that. [LB128]

SENATOR CHAMBERS: Okay. I'm going to make a statement first. [LB128]

DON KLEINE: Sure. [LB128]

SENATOR CHAMBERS: Well, I'll ask a question. Have we worked together in the past on some situations--I'm not going into all the facts--where you made a discretionary decision to not go forward with charges... [LB128]

DON KLEINE: Absolutely. [LB128]

SENATOR CHAMBERS: ...under all the circumstances? [LB128]

DON KLEINE: Yes, sir. [LB128]

SENATOR CHAMBERS: So we have worked together on various issues. [LB128]

DON KLEINE: Yes. [LB128]

SENATOR CHAMBERS: In working with me, and you know the things I've said, do you think I'm opposed to law enforcement properly carried out? [LB128]

DON KLEINE: No. [LB128]

SENATOR CHAMBERS: Now I'm going to make a statement. Cindy (phonetic) just reminded me of something. Some seven-year-old and ten-year-old black kids had firecrackers, and she saw the cops with these kids on the ground, and she came and got me. Now there are people in this room who think that's all right if they're black--seven- to ten-year-old kids with firecrackers, cops surrounding them, on the ground. And if they'd have shot the kid they'd have said, well, we thought he had a gun.

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But let me ask you this, have you had a chance to look at the language of this bill?
[LB128]

DON KLEINE: Yes, I have, Senator. [LB128]

SENATOR CHAMBERS: Do you think there...even if you're for it, and you may be because you're--who...you're representing the county attorneys? [LB128]

DON KLEINE: County Attorneys Association, that's correct. [LB128]

SENATOR CHAMBERS: Okay. Do you think that there could be a tightening of the language from what it is now? [LB128]

DON KLEINE: I think there's always scrutiny that needs to be on any bill and any tightening of language is probably acceptable. If there's a question about ambiguity of any kind, certainly we could look at that with regard to... [LB128]

SENATOR CHAMBERS: Okay, and that's why I'm not going to ask you any more questions, because you heard my views and some of them don't apply, especially where we've worked with each other. So that's all that I have. [LB128]

SENATOR ASHFORD: Thank you, Senator Chambers. Any other questions? Thanks, Don. [LB128]

DON KLEINE: All right. [LB128]

SENATOR ASHFORD: Any other proponents for this bill? Opponents? Neutral? Senator Coash. Senator Coash waives. LB142. Senator Lathrop, welcome. [LB128]

SENATOR LATHROP: Thank you, Senator Ashford and fellow members of the Judiciary Committee. This involves no crime. Today I'm here to introduce LB142 on behalf of the State Probation Administration. This bill was heard by the committee last year when it was introduced by Chairman Ashford but was not advanced for debate. [LB142]

SENATOR ASHFORD: Wait a second. Wait one moment here. Well, this... [LB142]

SENATOR LATHROP: It will, however, be advanced to debate this time. [LB142]

SENATOR ASHFORD: I don't recall them coming to me early in the last few weeks to ask me to introduce this. No, go ahead. Excuse me. [LB142]

SENATOR LATHROP: Huh. Well, you might have been busy. [LB142]

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SENATOR ASHFORD: Yeah. [LB142]

SENATOR LATHROP: LB142 would amend existing law to clarify that all probation records generated during a probationer's term of probation are not subject to disclosure under the Nebraska Public Records Act unless done as a result of a court order. Currently most probation records are exempt from disclosure except for alcohol- and drug-testing information. If drug and alcohol tests are released to the public, the results may be misleading to members of the public and may negatively impact the probationer's ability to complete their treatment. There is nothing in the bill that would keep records that are released in open court from remaining a public record. Steve Rowoldt from the State Probation Administration will testify after me and will provide the committee with additional information regarding the necessity of this legislation. That's it--pretty simple. [LB142]

SENATOR ASHFORD: Any questions of Senator Lathrop? Seeing none, thank you. [LB142]

SENATOR LATHROP: All right, thanks. [LB142]

SENATOR ASHFORD: Any proponents? [LB142]

STEPHEN W. ROWOLDT: (Exhibit 4) Chairman Ashford, members of the Judiciary Committee, my name is Stephen W. Rowoldt, R-o-w-o-l-d-t. I'm a deputy probation administrator for the state of Nebraska, and I'm employed by the Nebraska Supreme Court. I testify today in support of LB142 as this piece of legislation clarifies statutory language that all records developed and created by a probation officer, through the course of their investigation and their supervision of probationers, are not subject to disclosure under the Nebraska Public Records Act. This simple piece of legislation closes a loophole within the Public Records Act. Currently all probation records are exempt from disclosure under the Public Records Act with the exception of drug- and alcohol-testing information per Nebraska Revised Statutes Section 84-712. The drug- and alcohol-testing results of a probationer are already accessible under Nebraska Revised Statutes Section 29-2261, subsection 6. With good cause and justification the court may permit those records to be released. The Public Records Act permits the release of probationer's drug- and alcohol-testing results without cause--without justification. When drug- and alcohol-testing information is released to the public it may be misleading unless you have a full context and understanding of what is occurring in that person's life. For example, a probationer may test positive because they are taking a prescription medication which can be allowable under a court order. Another example may be administering a backup test for evidentiary purposes which would show two positive tests for one incident. An individual having only the raw data of drug- and alcohol-testing results may misinterpret the information without having additional

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information which is not available to them. Just reviewing drug- and alcohol-testing information in isolation does not convey the whole picture of the probationer's success or their lack of success. Release of that drug- and alcohol-testing without thoughtful consideration may hinder the probationer's rehabilitation. Since everything else in the probationer's file is subject to the Public Records Act, we believe that the drug- and alcohol-testing results should fall within the same category. Information released in open court would still be public record. Information could be released to law enforcement at the discretion of probation, just as current practice is. Or information can be released upon an order of the court, if need be. Probation's only objective is, is to remove the drug- and alcohol-testing information from being subject to the disclosure of the Public Records Act. I would be willing to work with you to achieve this goal. I appreciate your time, and I'm happy to answer any questions. [LB142]

SENATOR ASHFORD: Steve, thanks. Any questions? Senator Chambers. [LB142]

SENATOR CHAMBERS: Mr. Rowoldt, when did it come to your attention that this kind of information that you're trying to exempt from coverage under the open records law is, in fact, subject to the open records law? [LB142]

STEPHEN W. ROWOLDT: My estimation would be within the past couple of years. We've had some requests with regard to alcohol and drug tests to be made available. We did ask for an Opinion, and according to the 84-712--I believe it's under section 5--it does talk about everything else being exempt with the exception of drug testing. [LB142]

SENATOR CHAMBERS: Without giving names, who were those making such requests for this information? Were they family members in some instances? [LB142]

STEPHEN W. ROWOLDT: That would be possible that it would be a family member. [LB142]

SENATOR CHAMBERS: And with this, a family member could not get this kind of information. [LB142]

STEPHEN W. ROWOLDT: Not without going through a court proceeding or a court hearing or a court request. [LB142]

SENATOR CHAMBERS: What abuses can you specify that have occurred because the law is in the present state? [LB142]

STEPHEN W. ROWOLDT: As I indicated in here, and these are just a couple of them, when we talk about the use of our substance abuse testing, and truth be known it's technically a screening rather than a test, and that information is released as a test as being positive, technically when you take a look at that piece of it, it looks like it would

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be evidentiary. Fact of the matter is, is that we do dual tests in a lot of cases, for evidentiary purposes. [LB142]

SENATOR CHAMBERS: What cases do you know of where that has occurred, where this information was released and it was misconstrued and the person whose information it was had been harmed thereby? [LB142]

STEPHEN W. ROWOLDT: I cannot answer that question specifically, sir. [LB142]

SENATOR CHAMBERS: Was there a particular case of somebody who's deemed pesky in seeking this information, and it dealt with your office, the Attorney General's Office, and the Supreme Court? [LB142]

STEPHEN W. ROWOLDT: We have had that situation. [LB142]

SENATOR CHAMBERS: And that probably tied into the need for this kind of legislation? [LB142]

STEPHEN W. ROWOLDT: What we actually found with that, sir, is, is that we found that it was a loophole. We didn't realize it was there. And with those requests, we found that this was a loophole in the law with regard to releasing... [LB142]

SENATOR CHAMBERS: Because this person was pesky and you did not want to give up the information, did you? Or people in Douglas County didn't, did they? [LB142]

STEPHEN W. ROWOLDT: Correct. [LB142]

SENATOR CHAMBERS: And there was some information that had been recorded in court which Douglas County was reluctant to make available pursuant to requests and the Attorney General's Office had to be appealed to. [LB142]

STEPHEN W. ROWOLDT: Requested, correct. [LB142]

SENATOR CHAMBERS: Are you familiar with that case? [LB142]

STEPHEN W. ROWOLDT: Correct. [LB142]

SENATOR CHAMBERS: And that had a bearing on making the loophole, as you call it, known to you, correct? [LB142]

STEPHEN W. ROWOLDT: Correct. [LB142]

SENATOR CHAMBERS: Without this loophole, that person never would have gotten

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that information, would she? [LB142]

STEPHEN W. ROWOLDT: We had an interpretation previous to that, that it was confidential information. Yes, we did. [LB142]

SENATOR CHAMBERS: Hard cases make...are you a lawyer? [LB142]

STEPHEN W. ROWOLDT: No, I'm not, sir. [LB142]

SENATOR CHAMBERS: Oh. Have you heard the expression, "hard cases make bad law?" [LB142]

STEPHEN W. ROWOLDT: Yes, I have, sir. [LB142]

SENATOR CHAMBERS: Was that a hard case for you? [LB142]

STEPHEN W. ROWOLDT: Yes, sir. [LB142]

SENATOR CHAMBERS: You're...okay, and that could make bad law when we're going to change the entire law because of one case, huh? And you cannot show that from that request anybody was harmed. Wasn't it a situation--and I'm not giving names--where a family member was concerned about the fact that a child was put on probation and had violated probation and had been shown to be drinking and driving and doing other things and had a high-powered lawyer who managed to delay and delay and delay, and the child was continuing to drink and drive? Those were some of the things involved in the case, right? [LB142]

STEPHEN W. ROWOLDT: Sir, I did not have the detail of that. [LB142]

SENATOR CHAMBERS: You'd rather not answer, right? [LB142]

STEPHEN W. ROWOLDT: I did not have the details, specifically, sir. [LB142]

SENATOR CHAMBERS: Say it again. [LB142]

STEPHEN W. ROWOLDT: I did not have the detail, as you've described specifically, myself. [LB142]

SENATOR CHAMBERS: But there was something similar in that, if not in the exact pew, they were in the cathedral. [LB142]

STEPHEN W. ROWOLDT: Yes, sir. Yes. [LB142]

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SENATOR CHAMBERS: Okay, that's all I'm going to ask. Thank you. [LB142]

STEPHEN W. ROWOLDT: Sir. Sir. [LB142]

SENATOR ASHFORD: Thanks, Stephen. No other questions? Thank you. [LB142]

STEPHEN W. ROWOLDT: Thank you. [LB142]

SENATOR ASHFORD: Do we have any other testifiers on this bill? Okay. Senator Lathrop, you waived? [LB142]

SENATOR LATHROP: I'll close. [LB142]

KORBY GILBERTSON: Oh, no, we have (inaudible). I'm sorry. You said the next (inaudible). [LB142]

SENATOR ASHFORD: Okay. Oh...I just meant generally testifiers. I was trying to expedite the question. I will be more specific. [LB142]

KORBY GILBERTSON: Sorry. I thought you had asked for opponents. [LB142]

SENATOR ASHFORD: I will be more specific. [LB142]

SENATOR LATHROP: For committee members, we try to avoid the opponents. We hustle right past them and go to neutral testimony when we can. [LB142]

KORBY GILBERTSON: Yeah, and I'm neutral, so... [LB142]

SENATOR ASHFORD: Oh, oh. Any opponents? No. Go ahead. [LB142]

KORBY GILBERTSON: (Exhibit 5) That's why I asked when I came up. Good afternoon. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska which is made up of both print and broadcast media in the state of Nebraska. Last year when Senator Ashford introduced this piece of legislation, we discussed with him the need for an amendment. And I actually have the amendment from the last bill but ironically it fits in the same spot as it does on this year's bill. So I'll have you pass that out if you want. Media has two concerns with the legislation. Number one, the fact that probation officers have the ability to make administrative sanctions to the amount or different things that are happening during the probationary period. And we feel that there might be times in which those records need to be made public. And thus, we ask for this amendment that clarifies that anything, a record, a file, or information that is disclosed or provided to a judge in an open court proceeding or to a law enforcement agency or

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any other open meeting, be kept a public record. And that's just to clarify. I believe the person who spoke in support of the legislation talked about anything in open court would remain public. We didn't think that was very clear in the bill. [LB142]

SENATOR ASHFORD: Very good. Yes, Senator Chambers. [LB142]

SENATOR CHAMBERS: First of all, I'm partial to this witness. Her name is Korby Gilbertson. [LB142]

SENATOR ASHFORD: Yes. [LB142]

SENATOR CHAMBERS: I grew up on Korby Street. My youngest brother's name is Gilbert and he doesn't have a son, but if he did then there would be a Gilbert's son in my family. [LB142]

SENATOR ASHFORD: That would be wild, wouldn't it (inaudible)? [LB142]

SENATOR CHAMBERS: No kidding. Quite a coincidence. But, Ms. Gilbertson,... [LB142]

KORBY GILBERTSON: Uh-huh. [LB142]

SENATOR CHAMBERS: ...where it says, "in any court proceeding," would that include in-chambers proceedings? Because we're just talking about whether or not this information had been disclosed. So would you know whether that would include in-chambers proceedings? [LB142]

KORBY GILBERTSON: I would have to check. I'm not sure of if there's probation revocation hearings that go on in chambers or not. I do not practice any criminal law, thank you very much. [LB142]

SENATOR CHAMBERS: Okay, but if you could find out, I would appreciate it. [LB142]

KORBY GILBERTSON: Okay, but our intent was not for that, so if we need to clarify that it's in an open court proceeding. [LB142]

SENATOR CHAMBERS: But if that could happen, then this could give a loophole to a high-powered lawyer who'd say, well, we would like to conduct these proceedings... [LB142]

KORBY GILBERTSON: In chamber, um-hum. [LB142]

SENATOR CHAMBERS: ...in chambers. And it would be exempted and they would

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have achieved through indirection with you all's help, unintentionally, what they couldn't achieve directly. [LB142]

KORBY GILBERTSON: Right. [LB142]

SENATOR CHAMBERS: See, that's what happens when you get somebody whose idle mind has time to think and... [LB142]

KORBY GILBERTSON: Has had a little break to think. (Laugh) [LB142]

SENATOR CHAMBERS: That's all I have though, thank you. [LB142]

KORBY GILBERTSON: Okay, thank you. [LB142]

SENATOR ASHFORD: Thanks, Korby. [LB142]

KORBY GILBERTSON: Sure. [LB142]

SENATOR ASHFORD: I think that's...any other neutral testifiers back there? All right, let's go to... [LB142]

SENATOR LATHROP: I'll waive close. [LB142]

SENATOR ASHFORD: Yeah, you waived before or I thought you did maybe. Senator Mello. Oh, gosh. Senator Mello, do you think we'll be able find him, Rich? Oh, Senator Mello. Do you have that budget wrapped up yet? [LB142]

SENATOR MELLO: Working on it as we speak. [LB99]

SENATOR ASHFORD: Okay. [LB99]

SENATOR MELLO: (Exhibits 6 and 7) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB99 is designed to extend and enhance the provisions of Nebraska's existing ban on racial profiling. The current ban was first passed in 2001, and one of its primary components was the requirement that law enforcement agencies statewide collect statistical data that could be used to assess the prevalence of racial profiling relative to motor vehicle stops. This data is submitted to the Nebraska Commission on Law Enforcement and Criminal Justice, commonly referred to as the Crime Commission, on a quarterly basis, who in turn produces an annual report on traffic stops and allegations of racial profiling for the Governor and members of the Legislature. The reporting requirements for both local law enforcement agencies and the Crime Commission have been extended three times, most recently by

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our former colleague, Senator Bob Giese. That most recent extension is scheduled to expire in 2014, and LB99 would extend the requirements an additional four years to 2018. While we are nearly a year away from these requirements expiring, past instances when the requirement for local law enforcement agencies has been allowed to lapse temporarily has actually resulted in some agencies failing to submit quarterly reports for the first and second quarters. Following the enactment of the original racial profiling ban, the Legislature created the Racial Profiling Advisory Committee which was tasked with the advising the executive director of the Crime Commission on the production of the annual traffic stop reports. The membership and role of that Advisory Committee was expanded in 2010 to add representatives from the Latino American Commission, the Commission on Indian Affairs, the Nebraska branches of the NAACP, and the Nebraska State Bar Association. The intent of these changes was to allow the Advisory Committee to make recommendations of the Crime Commission on how to improve the annual traffic stop reports. While the data included in the traffic stop reports is vital for both local law enforcement agencies and the communities they serve, the numbers are just that--numbers. Since the original racial profiling ban was passed, the ability of the Crime Commission to do more comprehensive analysis of the data has been limited by existing financial resources. LB99 also includes a provision requiring that the Crime Commission seek outside additional funding sources to help fund a comprehensive review of the data so that we as policymakers can determine the underlying causes of the disparities currently present in the traffic stop data. While the numbers may be helpful by themselves, only when we understand what those numbers tell us can we address the difficult issues that lie ahead. Thank you for your time, and I'd be happy to answer any questions you may have. [LB99]

SENATOR ASHFORD: So it's the same issue we've had before where the counties aren't...and I do recall when we expanded the--I think two years ago or four years ago? [LB99]

SENATOR MELLO: Um-hum, three years ago, 2010. [LB99]

SENATOR ASHFORD: Three years ago, I remember. Any questions of Senator Mello? Seeing none, you probably better get back. [LB99]

SENATOR MELLO: I normally don't do this. I think most of you know I hate waiving closing, but I think I have to ultimately get back to the Appropriations Committee, so thank you. [LB99]

SENATOR ASHFORD: Well, you've got awesome responsibilities, Senator Mello, so thank you. All right, any proponents? Alan. [LB99]

ALAN PETERSON: (Exhibits 8 and 9) Good afternoon, Senator Ashford and members of Judiciary Committee. I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am a lawyer and I

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am the registered representative, the lobbyist, for ACLU Nebraska. That's the local affiliate of the national ACLU. I appear to you first of all to support LB99 in its entirety. It's a necessary extension of the power to take a look nationwide, excuse me, statewide to see whether there is at least some indication that racial profiling is still going on. We think it is. The other reason I appear is to propose a fairly substantial amendment to this bill to strengthen the efforts against such profiling to the extent it does occur in law enforcement. And I will distribute a copy, number one, of instances reported to my organization, ACLU, in Nebraska over the last two or three years which are rather detailed and, frankly, rather heartbreaking because it'll surprise you how extreme the indications of profiling are in just this handful plus one of instances--about six instances. Secondly, because I know how fast three minutes goes, I put my reasons and my ideas in writing in a letter. I apologize, it's three pages but it's very important. This issue is incredibly important in terms of what do we do in Judiciary--we look for justice. What's one of the key points of justice--equal treatment for all of our citizens no matter what their national origin, their race, may be. I also have distributed already a letter from Leslie Seymore who is the ACLU's representative on the Racial Profiling Advisory Committee. It makes many of the same points, though in better and less legalistic language, as I wish to make--calling for extension of the powers of the Crime Commission and of that Racial Profiling Advisory Committee. The main things that she argues for--and she, I should say, is a former Philadelphia police officer for many years, now Omaha human rights investigator in the housing area--the same points that she makes I try to make with the citations, etcetera. We have no enforcement power for our laws. May I finish just this paragraph, Senator? [LB99]

SENATOR ASHFORD: Yeah, why don't you do this? Give me--not all three pages--but why is it that... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR ASHFORD: ...you believe that the racial profiling is still going on? And... [LB99]

ALAN PETERSON: Yeah, right. [LB99]

SENATOR ASHFORD: ...not... [LB99]

ALAN PETERSON: I'll be careful. [LB99]

SENATOR ASHFORD: ...not all three, maybe half a page or... [LB99]

ALAN PETERSON: I appreciate it. [LB99]

SENATOR ASHFORD: Yeah. [LB99]

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ALAN PETERSON: Number one, the Nebraska Supreme Court about two or three years ago decided a case out of the city of Kimball. And in the discussion they said--I think was some critical look at these laws--that unfortunately, while we prohibit racial profiling in our state, there is absolutely no enforcement power, even in the Crime Commission nor in this committee I mentioned. Secondly, the wonderful reports put together every year and handed out contain in them--and here's the last one from April 2012--they contain in them the Crime Commission's own analysis saying, we have these indications that there may be profiling, we don't have the money or the power to go any further. And they say that over and over again with their excellent charts of the data, they recognize the need to do more. Finally, it can be done locally. [LB99]

SENATOR ASHFORD: Is it...Alan, is it... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR ASHFORD: I don't...sorry for interrupting. [LB99]

ALAN PETERSON: That's all right. [LB99]

SENATOR ASHFORD: But is it the numbers of stops in a particular area versus a number of stops in another area? [LB99]

ALAN PETERSON: They compare the number of stops and then look at the percentage of each particular racial minority to the whole population, and there are disparities up to eight or ten times the number of expected stops. [LB99]

SENATOR ASHFORD: Right. [LB99]

ALAN PETERSON: But then they say over and over again, but we can't prove that's racial profiling. And they say, we wish the local enforcement agency would follow up, but they can't make them. [LB99]

SENATOR ASHFORD: And there isn't anything locally, at least in our city that I know of anymore, that...where someone can file...well, yeah, I suppose there's some kind of complaint process but not the same complaint process that was...that existed before. [LB99]

ALAN PETERSON: You can file the complaint and they even compiled the number of complaints. This is the most shocking thing to have to tell you. Over the last several years there have been 111 complaints of racial profiling gathered by these local police agencies, turned in to the Crime Commission with report of what the disposition was. Of those 111, how many found that the complaint was well-founded? Zero. [LB99]

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SENATOR ASHFORD: Would it be better, Alan, for us to require that cities of the metropolitan class or the primary class where a lot of these things happen, and they happen other places, but would it be prudent to require that there be an independent investigation made of these things? [LB99]

ALAN PETERSON: You know, yes, if you could require it. [LB99]

SENATOR ASHFORD: I mean, how else do you get... [LB99]

ALAN PETERSON: The bill I've presented strongly recommends that the Crime Commission basically tell the locals, you need to look into it. [LB99]

SENATOR ASHFORD: But that's not going to happen so, I mean, they may tell them you ought to do it. [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR ASHFORD: But we've had this before us several times,... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR ASHFORD: ...I mean, three or four times or at least twice, this issue. It doesn't seem like there's any progress. So it would seem to me--what's that? [LB99]

ALAN PETERSON: I banged this, I'm sorry. [LB99]

SENATOR ASHFORD: Oh, okay...that it would seem to me that we should require these cities to have an independent review process. Here's the problem we've got, and I can only speak about...because this gets really deep into the juvenile justice issue as well, where we have too many minority kids in detention. So we have a disproportionate number of minority kids, whether they're...and we, you know, it's interesting. We think about minorities in Omaha--there are 89 dialects spoken at South High School today. It's the most amazing thing. So...but we...and we have a lot of incidents...we have a disproportionate number of kids who are minorities in the juvenile justice system, we have a disproportionate number of--and this is not just juveniles obviously--we have a disproportionate number of juveniles who are detained and in secure confinement, and we have a disproportionate number of minorities who are juveniles and others, in these stops. My guess...my thought is the Crime Commission, I'm sure, is trying to do the best it can. But if it doesn't have statutory authority, I think we ought to require these cities to have an independent review process for all these complaints. I mean, I don't know. Otherwise, we're going to have hearings from now until, well, certainly after I'm gone. Senator Chambers will be here but...and others will be here, but...and then, I don't know

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how else you do it but say, hey, we want these independently reviewed, and we want a report done back to the Crime Commission by these cities to say, we've reviewed these things and there is racial profiling. [LB99]

ALAN PETERSON: My proposed language goes about three-quarters that far in that it would require each local law enforcement agency to have a policy of discipline, of training, of prevention, benchmarking, whatever, and that could certainly include also investigation--normally it would. [LB99]

SENATOR ASHFORD: I mean, it may be there may be money involved but the problem with this--well, there will be money involved--but the problem with disproportionate detention or disproportionate... [LB99]

ALAN PETERSON: Contacts, they call them. [LB99]

SENATOR ASHFORD: ...contacts... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR ASHFORD: ...is that then these...if it's a juvenile these kids have records, they can't get jobs, they're walking around, they get into trouble. I mean, every time it's...then I'll shut up because I know...but this is really important to me. I mean, if...and to this committee because we've spent, as you know, lots of time on it. If you look back at the kids who are...have been in violent situations, either shot or being shot, the most extreme violence, and you look back on their lives, they're not in school, they have 17 traffic violations or drug possession violations, they have...it's, you know, it's every single case. If you go backwards, you look at the 80 kids that are in the...juveniles that are in the adult...not...in the juvenile correction facility in Omaha and you look back at those 80 cases, they've all had like the ten little things going. Now something...maybe they all go out and violate all the time every day but, I mean, my sense is that there is an awful lot of activity. And the...so they have a consistent pattern. Maybe they're just bad kids, I don't know. [LB99]

ALAN PETERSON: You know, that's a horrible problem. This bill and this particular problem is if there's a racial... [LB99]

SENATOR ASHFORD: I understand. [LB99]

ALAN PETERSON: ...disparity in that. Are we making a class? [LB99]

SENATOR ASHFORD: Well, that's statistical. What I... [LB99]

ALAN PETERSON: Right. [LB99]

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SENATOR ASHFORD: In real life this happens... [LB99]

ALAN PETERSON: Right. Yes. [LB99]

SENATOR ASHFORD: ...and it seems--not that statistics aren't real but, you know--but in real life this happens. And it seems to me that we have to...must require that a local subdivision or local city...a city to have an independent investigation or this will continue on, and it will cost the system a tremendous amount of money because these are the kids that get into trouble in the long run. [LB99]

ALAN PETERSON: I think the commission already reports that there are strong indicators--they call them red flags--that indicate the local agency ought to inquire and investigate, but they can't make them. Now... [LB99]

SENATOR ASHFORD: Well, how can you have zero findings out of 100 and some? [LB99]

SENATOR LATHROP: Well, I think there's a fair explanation. The police union contracts in some cities, perhaps including your own, do not permit reporting of such a finding. They...that's been the law, that there is that shield set up for locally negotiated provisions in the labor contract. Now that doesn't mean they don't do discipline. It means they apparently cannot report them. That's mentioned, and you'll see it in the report of the commission each year. [LB99]

SENATOR ASHFORD: Well, then how can we ever make the system better if we don't have any information? We have statistics, we just don't have any information. Thanks, Alan. [LB99]

ALAN PETERSON: Thank you. [LB99]

SENATOR ASHFORD: Yes, Senator. [LB99]

SENATOR LATHROP: Maybe I can make a point or ask a question. I don't do discrimination cases but I'm familiar with the process. [LB99]

ALAN PETERSON: Right. [LB99]

SENATOR LATHROP: And generally in an employment discrimination you start out with somebody who believes that they were fired or not hired or given a demotion on account of their race... [LB99]

ALAN PETERSON: Right. [LB99]

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SENATOR LATHROP: ...or some other protected class. The next step is they ask the employer and the employer offers an explanation. I did it because he was underperforming or whatever. It's generally regarded as a pretext. Then you prove a discrimination case with statistics. [LB99]

ALAN PETERSON: Right. [LB99]

SENATOR LATHROP: These would suggest that there is a reason for concern. My question is, no matter how much money we spend on it, each one of those cases are going to have somebody who said, I had a good reason this time. Right? [LB99]

ALAN PETERSON: Yes. [LB99]

SENATOR LATHROP: So what do we do with the information? Ultimately if we collect it and it shows, as apparently is the case, that an African-American person in Douglas County is twice as likely to get pulled over... [LB99]

ALAN PETERSON: And in Lincoln. [LB99]

SENATOR LATHROP: ...as a white counterpart,... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR LATHROP: ...what do you do with that, because in each individual case whatever explanation the officer's selling apparently gets bought, right? Or we'd have a pretrial hearing and whatever evidence they collected from the stop would be excluded. [LB99]

ALAN PETERSON: The police officer will say why they stopped the person. It may be something pretty minor. I couldn't read your license plate, whatever, and then I thought I'd better search, and so forth. The stats show that that has a racial bias or probably does. What happens in the administrative proceeding below is the officer presents the reason why he or she stopped the person, and then how do you prove that the purpose was biased by their race? It's very hard. [LB99]

SENATOR LATHROP: Once we know...once you look at the statistics and collect these... [LB99]

ALAN PETERSON: Right. [LB99]

SENATOR LATHROP: ...what can you do to stop it? We can...if we spent the money and had another study and another commission got together, reviewed all the

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information, came up to the same conclusions and said, by God, they're stopping black people twice as frequently as they stop white people, what's the fix? [LB99]

ALAN PETERSON: The fix...you know, a good friend and definite expert--perhaps a leading expert in Nebraska--is Doctor Sam Walker, Samuel Walker, formerly of UNO, who has studied this area and is an expert. He says the solutions need to be at the local level. The chiefs, the sheriffs, the head of the Patrol, they need to have specific procedures that are preventative. It includes training--not after the fact, but preventative. And so they're not talking about spending state money. You're talking about the Crime Commission saying, our stats show you need to do an investigation and get this stopped. You have a greatly disproportionate showing of racially motivated stops--not state imposed, not top down, but at that local level. They use benchmarking and things like that to see if they're improving. [LB99]

SENATOR LATHROP: So the best solution we can come up with as legislators is to mandate some form of training, study, because each individual is not going to get any relief from the results of this study. [LB99]

ALAN PETERSON: Only in the extreme ones, and the six examples that I gave you--the ACLU is looking into some of those--we're not powerless. In the extreme cases, we can file suit. [LB99]

SENATOR ASHFORD: Well, why don't you file suit? I mean, it...why don't you file suit because, you know, we've got a bill in today to close the YRTCs at Kearney and Geneva. And if we don't close those things, we're going to be sued just like most other states that have these deplorable facilities. And so it seems to me that someone ought to file suit because otherwise--to Senator Lathrop's point--this is not the first time we've heard this,... [LB99]

ALAN PETERSON: I'm sure. [LB99]

SENATOR ASHFORD: ...this issue. But when we can't do anything about it except get us more statistics, it's a little bit...you know, you leave the room saying, we haven't made it better for anybody. [LB99]

ALAN PETERSON: I don't think...I understand, Senator Mello's bill does a great thing in keeping adding the statistics and trying to get some money to do some analysis. I don't believe--and his assistant is here--but I don't believe he opposes our bill. His feeling, as I understand it, is if this committee would go further than his bill and try to do something such as by the amendment I drafted and ACLU drafted, I think they'd be happy with that. But I can't speak for Senator Mello. This does go quite a ways. [LB99]

SENATOR ASHFORD: Okay. Senator Seiler. [LB99]

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SENATOR SEILER: Senator Ashford, thank you. Alan, you've talked about training. [LB99]

ALAN PETERSON: Yes. [LB99]

SENATOR SEILER: Is there anything like that being taught at the state academy where all police officers have to go through? [LB99]

ALAN PETERSON: We believe there is some training in the area of racial profiling, avoiding both the appearance and the actuality. Maybe it should be more. That's one possibility. [LB99]

SENATOR SEILER: Well, that's what I was wondering... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR SEILER: ...if you had an alternative to saying that Madison, Nebraska, should go ahead and train with two officers. [LB99]

ALAN PETERSON: Yeah. [LB]

SENATOR SEILER: I don't see the benefit there. [LB99]

ALAN PETERSON: Well, yeah. [LB99]

SENATOR SEILER: But when...where you've got the academy itself... [LB99]

ALAN PETERSON: Yeah. [LB99]

SENATOR SEILER: ...is that someplace where we need to look? [LB99]

ALAN PETERSON: I believe it was last year this Legislature passed a bill requiring ongoing or continuing education for all officers--20 hours a year. [LB99]

SENATOR SEILER: Okay. [LB99]

ALAN PETERSON: Yes, you could make that a component of that additional training. I think some is done. Look, the chiefs, the sheriffs, they usually know, because they're on the ground, so to speak, where their problem officers are. That's why Doctor Walker and others in other cities say, make the fix be at the local level. Make there be a specific disciplinary or other training requirement, but let those local chiefs apply it. I think that's probably going to work best. [LB99]

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SENATOR ASHFORD: Cincinnati is where Doctor Walker spent a lot of time working... [LB99]

ALAN PETERSON: Yes. [LB99]

SENATOR ASHFORD: ...and they had some significant issues with racial profiling that erupted in... [LB99]

ALAN PETERSON: Right. [LB99]

SENATOR ASHFORD: ...very difficult situations which, apparently, they've gone a long ways toward remedy, from what I've been told by Sam. [LB99]

ALAN PETERSON: Yes. [LB99]

SENATOR ASHFORD: And it is local level, but in the Cincinnati case there was investigative powers given by the local--by the mayor or whomever, the city council--and it made a difference. [LB99]

ALAN PETERSON: Right, yeah. [LB99]

SENATOR ASHFORD: I don't want to belabor this, it just seems--any more than I already have--but it just seems to me this is where a lot of these problems start. That...or why do these kids and all these people that are minorities get into more violent situations? [LB99]

ALAN PETERSON: Right. [LB99]

SENATOR ASHFORD: Well, it starts right here because how can you have trust if you have--with local officers--if you have this, even if it's a perception of profiling, whether or not profiling actually occurs? [LB99]

ALAN PETERSON: Yep. [LB99]

SENATOR ASHFORD: I mean, that's just my...anyway. [LB99]

ALAN PETERSON: Yeah. It's better policing as well as better... [LB99]

SENATOR ASHFORD: Well, what's community policing mean if we have disproportionate...what is community policing then? Is community policing more...picking up people more, or what is it? [LB99]

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ALAN PETERSON: No. I'm saying, get it stopped. [LB99]

SENATOR CHAMBERS: Can I make a suggestion? [LB99]

SENATOR ASHFORD: Yeah. [LB99]

SENATOR CHAMBERS: In my community this happens. I went through it all on those other bills. This is kind of putting the bow ribbon on top of the package that I tried to present to this committee earlier in terms of all of the problems and how laws are passed that give these cops a basis, a pretext, and an excuse, to do the profiling. It's his word against mine. Now, if he's a racist, he stops me because I'm black, and he knows he's got superior officers who will back him. He knows there are judges who are going to support him. He knows there are prosecutors who are not going to do anything. Unfortunately, we on the underside of the garment know that the constitution does not work for us. The law is oppressive to us, but it's the only thing that we've got. It would be unfair to give Senator Christensen a giant power saw and tell him, bring down that redwood--and the staff and the helpers to do it. They tell me, Chambers, there's a redwood next to it, bring that redwood down and here's a pocket knife, and I want you to do it as quickly as he does it. When you have unequally situated people and you say, we're going to put the same standard or requirement on you, therefore, it's not discriminatory, it's discriminatory on its face because the two people are not similarly situated. And there is no way that there can be fair and equitable enforcement of the law when you have these outrageously disparate results. And when all a cop has to do is say something and you know they're going to say it, and you know they're going to get away with it, and they are racist when they get on the force, and their racism is entrenched and institutionalized by the system itself and their superior officers and the court system, if you're going to talk about training, here's all the training that you need, and they get it anyway: Don't make a stop of anybody without probable cause; don't make pretextual searches where you pretend there's a basis for a search and there's not; don't do that; don't make an arrest without probable cause; and forget about race. But that's not going to work. In my work in west Omaha, southwest Omaha...and if all these people think everything is fair and just would sit down in Douglas County Court sometime and watch the way black defendants are treated, their lawyers are treated, the sentences handed out, and they are so blatant that you can have two cases, one right after the other, a black person and a white person, and the white person has a more serious charge, and the white person walks out of court and maybe with probation. The black person goes to the penitentiary. And I, as a black man, am supposed to sit there and say, this is America, God bless America? I don't use language but there's another word I would put in place of "bless." And the thing that makes our children and adults such as myself bitter...I'm educated. All of my education was in white schools, all of my professors were white, from high school through Creighton University undergraduate school through law school. I didn't attend classes. I made the dean's list in law school, didn't fail an exam, didn't fail a class. So what are they going to

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say when they stop me? They don't have to say anything. He's black, and that's all that it takes. And you all don't believe it. I experience it, people in my community experience it, people in my family. One time when my child was six years old, a cop came and hounded and harassed him, and my wife called me. And I came home because the barbershop was not far from where I lived. And when the cop saw me coming he took off. Six- or seven-year-old black child, what do you think that makes him think about the police, and what do you think it makes his father feel? I care about my children like you pretend to care about yours. I will die and go to hell ten times for my children. And I'm the only black person in this Legislature who will speak. And I'm going to speak and I will be heard. And you can ignore it, you can say it's not true, but I'm going to say it, and I'm going to say it, and I'm going to say it. Stop giving these cops excuses by pretending they have to have special training to know how to treat me. I am a human being. What about "No Man Is An Island?" Every man's death diminishes me because I am a part of humanity--what about that? For white people but not for us. Do you have any idea how hard it is for me to sit here and listen to this? Unfortunately, my mind is working all the time, I can't tune it out. You all can get tired of hearing it because you go home and that's the end of it. You sat at a long hearing. I've got to go home and not only live it, but listen to people. My phone is full of calls where some cop stopped their child, make them lay down on the ground, and you all don't have it happen so you say it doesn't happen. There are cops who know it happened and they won't do anything about it. They're sworn to uphold the law and when they see one of their fellows violating the law, they don't do anything to stop it. That's why I say the cops are gangsters, they're crooks, and we see them as criminals, and they violate the law and get away with it. And they can laugh about it. Caught on video, and if they're not going to believe the video...you think like the sheriff. He can sit there and say, well, I don't know that they're going to take the white cop's word over that of a black defendant. You all know better than that, but I've got to sit here and I've got to listen to it. But the real problem is that the law is enforced based on those racist, discriminatory principles. As hard as I seem to be on "Brother" Coash, I don't have anything against him, but he brought the bad bill that's going to hurt my people. So when that happens, it's like Rommel said, the Nazi, when they captured South African troops in North Africa. And I didn't even know that those racists allowed black men to fight in the South African army. And the ranking South African prisoner told Rommel, the Nazi--I guess thinking like he's like the United States of America that says, all men are created equal--he said, in our country the two races are kept apart, so when you have a prison barracks, we don't want the blacks and the whites put together. And Rommel, the Nazi, just looked at him because Rommel was a soldier. He said, you all wear the same uniform, you all are from the same country, you're all prisoners together, and you will be put in the prison barracks together. This--I'm adding this--this is not the United States of America where they segregate their troops, where they treat Italian and German prisoners of war better than they treat the black soldiers who guard them. When the black soldiers take these white prisoners of war into the South, you know what they're told? The white prisoners can come in, but you--and they use the "N" word--stay outside. And you know who enforces

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it? White cops with the American flag on their sleeve. And you want me to have my children and me salute this flag like you all do in this Legislature? And you have no idea what happens in this country, and you're going to tell me freedom and justice for all? The land of the free and the home of the brave? And I know what we experience and you don't even care. So I have to talk loud, I have to talk long, I have to be strong, I cannot get tired, I cannot be daunted, I cannot get discouraged, because I know what the odds are against me. And the best of you--the best of you--the best intentioned of you don't believe me. And if you believe, you're not going to do anything. And you say, what's the matter with Ernie? What's he mad about? I'm not like President Obama who's afraid of being called an angry black man. He has reason to be angry, he's not allowed to be angry. And he's been advised, never show anger. And if you watch him, he is so calm on the outside, so cool on the outside, so collected on the outside, that even white people say he is detached, he has no feeling. He will not say, like Bill Clinton, I feel your pain. You know why he won't say that? Because he's experiencing the pain of people like himself and how is he going to look saying he feels the pain of white people? This is what we're dealing with. So I'm going to support continuing to gather the statistics, just like I continue to support the constitution though it doesn't work for us. I will continue to try to protect the white Nebraskans, white constitution, as I was able to do before I left here. Then you put the asinine thing of protecting hunting, trapping, and fishing into the constitution. And when they tried to do that--and I'm going to educate my colleagues--I'm going to bring you documentation from your history which you don't know, that when the U.S. Constitution was being drafted some idiots wanted to put into it the protection of hunting or fowling, trapping, and fishing or angling. And it talked about how they were met with whoops and uproarious laughter and said, then not only should we put hunting, trapping, and fishing to be protected in the constitution, we should put that a person is protected when on a cold winter night he sleeps on the right-hand side then halfway through the night he rolls over and sleeps on the left side, and we should protect his right to do that in the constitution. And they laughed. But that would be put in the constitution here. I deal with fools. I deal with ignoramuses. I deal with people who don't know what a constitution is, what its purpose is. And here I am, a black man, feeling like a fool saying, respect the constitution which is the supreme law of your state. Don't trash it, don't demean it. And you know why I'm doing this? Because I'm a member of the Legislature now, and if you think I should not say what I've got to say on my mind, I don't tell anybody to go out the door, but that officer in the back is not going to pull a gun on you and say, you've got to sit there and listen to Chambers. And I'm not going to walk out myself. And I'll say what I've got to say, and anybody who doesn't like it doesn't have to listen. But I'm going to say it, and everything we say is taped, it is transcribed. And you know what? I'm saying things now that I said 30 years ago. How is that, that things haven't changed in 30 years? For you all but not for us. And anybody who doesn't like what I say, they can say it to me here or they can say it out in the hall because they don't...they make a mistake if they judge or misjudge my manhood by that of Martin Luther King. You'll see that there's some life in these old bones, and that I will deal with any man any way that man wants to deal with me. If he

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comes at me like a man, that's the way he's going to be dealt with. If he thinks he's got a pushover or cupcake and a coward, then he can be taught otherwise. Now, you know what? If I said that to a cop, because he's got the gun and I haven't, he'd call for backup, and he'd go upside my head with a club, put the handcuffs on me, and charge me with interfering with an officer, assaulting an officer. And I would be convicted of that, and you all wouldn't care. All you have to do is listen to me and see how...you know what I'm going to do? How upset are you? And all you're doing is listening to me talk and you can leave whenever you want to. I'm not going to do anything to hurt you. I'm not going to cut your salary. I'm not going to take your job. I'm not going to cheat your child out of an education. I'm not going to tell you, you cannot get medical care for your child. I'm not going to abuse your spouse. And see how angry and upset and offended and outraged and indignant you become, just at my words? If my words can upset you that much, why are you going to sit there and pretend that you don't understand how mistreatment of my people upsets me? You want me to tell you why? Because you don't see me as a human being. My final thing, and then I'm through. There was a movie about a man called John (sic) Merrick, known as "The Elephant Man." And he went through the streets of London with this grotesque, ghastly hood over his face with an eyehole cut because he had that ailment where the flesh would grow and even move the bones. And they called him "The Elephant Man" because he had a very misshapen face. And he had trouble walking like a human being or doing anything that a person would do. So he was near one of these trains, and these little boys were down and--you'd go down these stairs and they saw him--got off the train, he's going up these stairs and they looked at him. And because of the way he was walking, they made fun of him like kids will do. So then, because he didn't want to put up with this he started running. And as he ran he bumped into people. He might have knocked a little girl down. And so the mob took out after him, and he went...he turned a corner and he went into this enclave-like building, and he couldn't get away. And he was standing there, and they were all hollering and saying what ought to happen to him. Then somebody snatched that hood off his face and there was all this ghastliness, and those people gasped and stood back. And what he said--and it stopped them--I am a human being. And they looked just like you all are looking now. The mob turned into a crowd of people who were ashamed, who should have come to that man's aid but they did not see him as a human being. And that's the problem. You all don't see me and my kind as human beings. You wouldn't tolerate it if it happened to you and yours. And not one of you says what I say in this committee or anywhere else because it doesn't happen to you and to yours. And as long as it doesn't happen to you and to yours, you don't care. And I will check my record against anybody's. And I speak up more for your people, and have in this Legislature, than any other senator, those of your people who are discriminated against not by black people, by white people, by your women who get treated in a very disrespectful way on their job, not working for a white man...black man, but for a white man. I've gotten judges disciplined for the wrongful treatment they directed toward white women. Where were the white men? It's hard to walk the path that I have to walk, but I do it. And that's why I don't feel inferior to anybody, and I can understand why the white

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people in the Legislature feel inferior to me and have to change their rules to try to shut me up. But it's not going to work. And as long as these kind of bills come, and the kind of conversations occur, I say even well-intentioned people, I'll take it as long as I can but when the point reaches...is reached where I can't take it anymore, then I'm going to try and reason with you because as you were growing up--you weren't always like this--you were not always insensitive. There was a time when you were young enough and your heart was tender enough to see somebody else suffering, and even if you never saw it you could feel it. You were sympathetic. If you couldn't do anything to stop it, you wished that it would stop, and there would be no participation you would have in it. But now you're old, now your heart is hard, and now you don't care. And whatever humanity you had was squeezed out of you drop by drop, and now you are inside what John (sic) Merrick looked like on the outside. But remember this, it's never too late if you're going the wrong way down a path to stop, turn around, and do the right thing. And what Mr. Peterson is suggesting today is that with all of the well-intentioned bills that were passed and all the intent and hopes that a change will occur, something more than that is needed. And an amendment will be offered to try to make somewhat of a difference. He and I have been in this struggle so long, we know that there's no single law that's going to correct everything. We're not going to make every police officer honest. We're not going to make every scholar do his or her work. But because we can't do it all doesn't mean we shouldn't do what we can. And what we've done so far is not enough. This that he's offering is not enough, but we have to keep going. You all have the power saws. People like Alan and I have the pocket knife because we've been whittling away at that tree all these years. And the thing that makes it doubly sad for us is that the tree can grow back faster than we can whittle it away. So I guess what we're really saying is, come over here and help us, knowing it's not going to happen. But we still, for some reason, believe. And maybe that's our definition of insanity. We continue to do the same thing over and over, continue to get the same negative result, and continue to believe that if we keep doing the same thing over and over we might make a difference. And you know what I feel today? Like James Brown, I've unburdened my soul so I feel good like I knew that I would. And I am through. [LB99]

SENATOR ASHFORD: Thank you, Senator Chambers. Thank you, Alan. Do we have any other testifiers...do we have for the bill? Couple? Okay, great. Do we have any opponents to the bill? Any neutral testifiers? Okay. [LB99]

ALAN PETERSON: Thank you. [LB99]

SENATOR ASHFORD: Thank you, Alan. Okay. [LB99]

JUDI GAIASHKIBOS: Okay. [LB99]

SENATOR ASHFORD: Okay. [LB99]

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JUDI GAIASHKIBOS: Good afternoon, members of the Judiciary Committee. Welcome back, Senator Chambers, I am inspired and encouraged. I am Judi gaiashkibos, J-u-d-i, gaishkibos, g-a-i-a-s-h-k-i-b-o-s. I am the executive director of the Nebraska Commission on Indian Affairs. I am a member of the Ponca Tribe of Nebraska, and I also serve on the Racial Profiling Advisory, and I rise in support of Senator Mello's LB99. Today as I was thinking about coming here to testify, I thought, well, I should do a little research. And I know my personal feelings about why I think this is a good thing to do, and I support the amendments that we've discussed, and I agree with much of what has been said. So I did what many of us do and I did a little Googling. And I typed in "history of racial profiling" and I came up with something that I thought was quite profound. And it was so small on the civil liberties Web site that I had to type it larger so I could read it to you, but it isn't long and I would like to read it. I think it's very appropriate. Racial profiling is irrational, unjust, and unproductive, but one thing it is not is un-American. Racial profiling has been part of the United States' criminal justice system for as long as there has been a U.S. criminal justice system and part of North American colonial justice systems in the centuries prior to its formation. While little has been done to root out the problem, it is at least acknowledged as a problem today, a considerable improvement over the explicit policy-level endorsements of racial profiling that characterized law enforcement treatment of people of color in centuries past. In 1514 the ultimatum of King Charles I mandated that all natives of the Americas, including my Ponca people, must either submit to Spanish authority and convert to Roman Catholicism or face persecution. It was the only one of the many colonial Spanish criminal justice mandates established primarily to promote law and order in the New World that used a racial profiling policy against American Indians. Today American Indians are still racially profiled at a higher rate than many others in our state. Our cars are searched at a higher rate. And these reports keep telling us that, but what is being done? We jokingly say as Indian people, we know what a DWI is, it's driving while Indian. So the data that's collected reflects that not only in Thurston County where our Native children are removed from tribal homes at a higher rate than anywhere in the state, according to the Kids Count report released today, so, too, are the first peoples of this state discriminated against by the legal system. Therefore, I urge the Judiciary Committee to continue the work and support LB99. Thank you. Wi'Bthu Ho. [LB99]

SENATOR ASHFORD: Thank you. Any questions? I don't see any. Thank you very much. Next testifier, proponent. [LB99]

LAZARO SPINDOLA: (Exhibit 10) You ruined my testimony, I forgot everything I was going to say. Good afternoon, Senator Ashford and members of the Judiciary Committee. Thank you for receiving me here today. My name is Lazaro Spindola, L-a-z-a-r-o S-p-i-n-d-o-l-a. I am the Director of the Latino American Commission and I am also a member of the Racial Profiling Advisory Committee. I am here in support of LB99, basically because three years ago when I joined this committee I was surprised and amazed at the amount of data that had been gathered by the Crime Commission,

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data that there is no other way to access unless these reports continue, hundreds of thousands of reports which are gathered and tabulated by the commission, and which open the door to the investigation of other things. So the continuance and expansion of this data base should be guaranteed or must be guaranteed. Nevertheless, as I was reading these reports there were a couple of things that kind of bothered me and struck my eye. Alan mentioned one of them. One is the fact that there have been 111 allegations of racial profiling during the last 10 years, and none of them has been found to be justified. Now, statistically--and I believe in statistics--this is funny. This is curious because at least one event should have been justified. But this is like if the Huskers won 111 games in a row or lost 111 games in a row, it's possible but not very probable. And I am sure that if the Huskers lost 111 games in a row there would be millions of dollars spent trying to figure out why. The other thing that bothered me, of course I'm not saying why this is happening, I'm not even making a suggestion as to why this is happening, I'm just saying that it needs to be further investigated. The other thing that I notice is that the information gathered and compiled by the Crime Commission is presented in raw numbers and percentages. Data thus presented correlates percentages of traffic stops with percentages of population by ethnicity reflects mostly linear trends without significant difference between one or the other. My little commission decided to go a little further. And we see this problem in public health so what we do is we start finding out rates, in this case, rates per 1,000 people. And we even went further and found rates per 1,000 people over 18 years of age which are supposed to be the drivers, by race, and we did it for the years 2006, 2008, 2010, and 2011, because we couldn't go any further. The results are in the graph attached to my testimony. You should have it all in the second page. And you can clearly see that there is a disparity between the rates of traffic stops regarding the different ethnic groups. The only one that approached the rate of traffic stops for white people were the Hispanics in 2010. We're now coming apart again. So there is obviously a disparity and there is a need to investigate this. I will not speculate as to the reasons why this happens. LB99 is requesting that the committee be given the authority to seek funding to investigate why this happens, which is the answer that I got a year ago when I asked, why isn't this being investigated? And they told me it is a wonderful mandate. So I respectfully ask you to proceed with this bill and allow the committee to do so. Thank you. I would be happy to answer questions if you have any. [LB99]

SENATOR ASHFORD: Thank you, Lazaro, for your comments. Okay. I don't see any questions. The next testifier, proponent. [LB99]

REBECCA GONZALES: (Exhibit 11) Good afternoon, Senator Ashford... [LB99]

SENATOR ASHFORD: Good... [LB99]

REBECCA GONZALES: ...and members of the Judiciary Committee. My name is Rebecca Gonzales, R-e-b-e-c-c-a G-o-n-z-a-l-e-s, and I am with Nebraska Appleseed

Center for Law in the Public Interest. We are a nonpartisan, nonprofit organization dedicated to justice and opportunity for all Nebraskans. Today I'd like to testify in support of LB99. Racial profiling occurs whenever law enforcement agents single people out on the basis of their race, ethnicity, religion, national origin, or perceived citizenship or immigration status. It is a direct breach of the founding principles of this country and a practice that undermines effective policing by diverting precious law enforcement resources away from smart, targeted, behavioral-based investigations. Widespread use of racial profiling also causes a community to lose trust in law enforcement, and as a result community members become less likely to assist with criminal investigations or seek protection from police when they themselves are victimized, which makes everyone less safe. We've held a number of community conversations and forums on justice in Nebraska. One of our first conversations, "The Color of Equity: Is There Justice For All?" addressed disproportionate minority contact with the justice system and was attended by over 125 community members, law enforcement, and justice leaders. The conversation centered around the data that was currently being collected and the analysis of that data. Community members and panelists agreed that there was a real need for data collection to track decisions that are being made, to find out where disparities are, and to make changes that will ensure that there is justice for all Nebraska. This law was originally passed with widespread support with the hope that it would provide information needed to improve the justice system's ability to monitor racial and ethnic disparities. The urgent need for this information to improve our justice system and eliminate racial disparities continues. Then Lincoln Chief of Police, Tom Casady, wrote in his blog the day after our community conversation, "You are living under a rock if you don't recognize the depth of distrust that festers in the United States between police officers and many African-American citizens. Making even small steps towards bridging that gap requires that we talk about these issues with one another." Good data will enable these conversations to continue and to allow us to improve what Chief Casady characterized as "something of a national disgrace," the racially skewed demographics of our jails, our prisons, and correctional institutions. Although we have not reviewed the proposed amendments, we would welcome any stronger law that would include independent monitoring and analysis of data collection. The data should be independently analyzed for any statistically significant disparities which may indicate racial profiling. This information should then be communicated back to law enforcement agencies which must take measures to address and eliminate the problem. Whether we look at the solution at the local or state level, law-enforcement researchers and advocates need the data and independent analysis to implement solutions. Thank you. [LB99]

SENATOR ASHFORD: Thank you. Any questions of Rebecca? Seeing none, thank you. [LB99]

REBECCA GONZALES: Thanks. [LB99]

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SENATOR ASHFORD: Any other proponents? [LB99]

ELIZABETH NEELEY: (Exhibit 12) Good afternoon, members of the Judiciary Committee. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y, and I'm here today on behalf of Nebraska's Minority Justice Committee which is a joint initiative of Nebraska Supreme Court and Nebraska State Bar Association established to look at issues of racial and ethnic fairness in our court system. I'm here today on behalf of the committee to support extending the ending date for legislation which requires law enforcement to submit race and ethnicity data related to traffic stops for several reasons. And the first is that our ability to examine issues of racial and ethnic fairness at the court-system level is tied to our ability to access race and ethnicity information. And the primary source for courts' data originates from the information collected by law enforcement. So if this information is no longer collected at the law enforcement level, it makes it very difficult for us to look at issues of racial and ethnic fairness at that subsequent stage which is the courts. Second, and has been expressed here already today, we believe that the very fact that this data is collected provides residents with some sense that the actions of law enforcement do not go completely unchecked and enhances the sense of trust and confidence in the justice system. The perception of fairness and confidence in the justice system shouldn't be underestimated. Attitudes towards the justice system affect the way people perceive their role in the system, their willingness to report crimes, serve as jurors, those types of things. And so a public...legitimacy in the court system is, in part, based on public perceptions of trust and confidence. Third, our ability of Nebraska's counties to access federal funds is also tied to our ability to provide this data. The Office of Juvenile Justice and Delinquency Prevention has tied 25 percent of all federal funds granted to Nebraska to our ability to report on the extent to which minority youth are disproportionately represented in our system because, if this bill does not proceed, we're impacting our ability to comply with those federal mandates and our state is at risk for losing those funds. Finally, the practice of racial profiling leads to overrepresentation of minorities across the continuum of justice and should not be tolerated. It is our hope that by continuing this bill we can improve the quality of data and drive policy regarding law enforcement practice and training. I'd be happy to answer any questions. [LB99]

SENATOR ASHFORD: This is over 18, so if we were over 16 I wonder what it would look like. [LB99]

ELIZABETH NEELEY: That's a good question. [LB99]

SENATOR ASHFORD: And I wonder what the outcomes of these...I mean, we're at 600 for blacks, African-Americans, blacks, the black...we're at 600 and the... [LB99]

SENATOR LATHROP: Per thousand. [LB99]

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SENATOR ASHFORD: ...per thousand, and the white population is 350 per thousand. I mean, it's beyond belief. Now...so what do we know about...and I'm not going to belabor this because it's 4:20 but so what do we do, as Senator Lathrop rightly asked? I mean, we go on and on and it continues to be 600 versus 350 and then...so what? I mean, I know so what. But so what? What are we doing to...what are we doing to address it? I know you work on addressing it every day of your life, and thank you for all your service. But...so tell us, in your opinion, what should we do to correct this problem? []

ELIZABETH NEELEY: I wish I had all the answers... [LB99]

SENATOR ASHFORD: Or one answer. One. [LB99]

ELIZABETH NEELEY: ...but a few things I would offer, I think the idea of having a independent investigation of the 111 complaints of racial profiling is the first place to start. North Carolina just published their own study of racial profiling just several months ago, and they did that kind of very deep-level analysis. Nebraska right now has aggregate-level data and so we can't, for example, look and see in Lexington... [LB99]

SENATOR ASHFORD: Right. [LB99]

ELIZABETH NEELEY: ...or in Dawson County, is this the action of one police officer or an entire police force? And you can't really drill down. And I think that's why the Crime Commission is in the position of saying, our hands are tied. We have to have this happen or a change happen at the local level. I have sat in on these advisory committee meetings before, I'm not a member. I'm not optimistic that an additional study...I think that making recommendations for change requires a lot of leadership and I haven't seen the willingness to go out on a limb on that and make those solid recommendations for training. [LB99]

SENATOR ASHFORD: Well, I think we should...I'll go on a limb and say we ought to do it. And you know this is where we started, Liz, you and I, when we started truancy five, four years ago, and I know Senator Chambers had his reservations about that. But we only had aggregate data. Once we drilled down and found out what was happening to these kids and figured out a way to help them, that aggregate data didn't do anything for us. And this aggregate data only...I mean, it's stunning. But other than it's stunning, that's about all I can say about it until we...we need to have an...we need to have independent investigatory processes in these areas. Don't we? I mean, how else do we find out if it's... [LB99]

ELIZABETH NEELEY: Yeah. I'd like...I guess I'd like to give you two examples. The study from North Carolina, one of the things they found was that blacks were disproportionately stopped for not wearing a seat belt. And because they had that level of data, they could find that that was the reason that law enforcement were using. In

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Nebraska that's not the case, it's a secondary offense and you can't be pulled over just for not wearing a seat belt. But the research nationally shows very consistently that any time you have a crime that is characterized by high levels of discretion, like disorderly conduct could mean 75 different things depending on who the officer was, depending on who the juvenile or the defendant was, the attitude that they were in, the mood they were in that day. And when you have crimes that are classified as that high discretion, you overrepresent minorities. And the way to fix that is to have, as Senator Chambers suggested, probable cause or, in other cases, objective criteria. When you have something like disorderly conduct or kind of vague reasons for pulling someone over, the way to fix that is to have objective criteria for making those decisions so that you can remove the potential for implicit bias to flavor those decisions. [LB99]

SENATOR ASHFORD: We don't even know, Liz. Those are good suggestions, definitely. We don't know what these charges are? [LB99]

ELIZABETH NEELEY: I don't have access to the data so I'm not quite sure. [LB99]

SENATOR ASHFORD: And who has that data? [LB99]

ELIZABETH NEELEY: It would be Mike Overton at the Crime Commission. [LB99]

SENATOR ASHFORD: So Mike Overton, we could just go get them from Mike. [LB99]

ELIZABETH NEELEY: You could ask, yep. [LB99]

SENATOR ASHFORD: And then we could subpoena, we have the authority to subpoena those records. So the Exec Board has that authority, isn't that right, Senator Chambers? [LB99]

SENATOR CHAMBERS: Our committee does too. [LB99]

SENATOR ASHFORD: And this committee, so could subpoena those records and we were...you know, we asked for...well, strike that. But we could get that and we should do that tomorrow. We should ask for those records, which we will do. And then we will know. So LaMont can do that and we'll subpoena those records. Okay? [LB99]

ELIZABETH NEELEY: I'd volunteer to help you analyze that if it became available. [LB99]

SENATOR ASHFORD: Okay, great. Yes, Senator. [LB99]

SENATOR CHRISTENSEN: Thank you, Chairman. Liz, is there other states that have examples how they've determined if it's individual actors, whole police forces, and

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handled situations we're visiting with? [LB99]

ELIZABETH NEELEY: I can't give you a definitive answer. I would tell you that nationally Nebraska probably has a more progressive statute in place in terms of racial profiling. Many states don't require the collection of this data or an annual review of it. [LB99]

SENATOR CHRISTENSEN: So there's a (inaudible) you don't know of a good example, is what you're telling me? [LB99]

ELIZABETH NEELEY: I think North Carolina was one of the first states to enact this and probably has the most detailed level of analysis that we could follow. [LB99]

SENATOR CHRISTENSEN: Thank you. [LB99]

ELIZABETH NEELEY: Yep. [LB99]

SENATOR ASHFORD: Okay. Okay. [LB99]

SENATOR LATHROP: Liz, what'd they do with it? [LB99]

ELIZABETH NEELEY: What do they do with it? [LB99]

SENATOR LATHROP: Yeah, once North Carolina does the study, what do they do with it...to stop it? [LB99]

ELIZABETH NEELEY: Right. Well, they're actually in the process right now of legislative change on how they address consent searches and the other example of seat belt violations. And so it's again targeting those issues of high discretion and making sure there's objective criteria for law enforcement to follow. It doesn't necessarily have to be a legislative change. Some of this is internal law enforcement policy and practice about when it's appropriate to make a...to, you know, charge somebody with a crime, these are the criteria that we're going to use. It's a training issue as well. [LB99]

SENATOR LATHROP: That study that we're looking at is stops, not necessarily convictions though. [LB99]

ELIZABETH NEELEY: True. [LB99]

SENATOR LATHROP: And the stops...so what are we doing? If it's a black person and they have a taillight out, we're stopping more than if it's a white person? I mean, they have some reason, some infraction, typically a taillight out or a license plate missing or something? [LB99]

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ELIZABETH NEELEY: Right. I mean, there should be...in the data the reason for the stop should be indicated. I'm not sure. I've never seen it and I...you know, to be honest the way the data is presented almost is designed to not give you the full picture. And I think, as Mr. Spindola from the Latino American Commission pointed out, recalculating this as a rate is much more descriptive and provides the full picture. The way that this report is done it kind of leads the reader to be confused and not really understand the level of disparity. [LB99]

SENATOR LATHROP: Well, converting it to stops per thousand is very useful. [LB99]

ELIZABETH NEELEY: Right. [LB99]

SENATOR LATHROP: But in the end maybe you can think about this and get back to me or us. [LB99]

ELIZABETH NEELEY: Sure. [LB99]

SENATOR LATHROP: And that is, what do we do when we have the information? What's the solution... [LB99]

ELIZABETH NEELEY: Yep. [LB99]

SENATOR LATHROP: ...if anything? Is it training the police officers or is it...does it require some legislative action? [LB99]

ELIZABETH NEELEY: Yes, sir. [LB99]

SENATOR DAVIS: Liz, just a question about the data and things. Has anything been done about age, correlating age with the data that we've got? The age of the stop? [LB99]

ELIZABETH NEELEY: No. [LB99]

SENATOR DAVIS: Would that be useful? [LB99]

ELIZABETH NEELEY: I think it would be possible. I think date of birth is something contained on the uniform citation so that you could look at it. What you see here is pretty much the basic just number of stops. [LB99]

SENATOR DAVIS: Generic numbers. [LB99]

ELIZABETH NEELEY: There's no kind of deeper level or analysis. [LB99]

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SENATOR ASHFORD: Yes, Senator. [LB99]

SENATOR SEILER: You touched on something that I was...that perked my interest. You said the data needs to be studied by an independent commission. Is there one that's in existence now that could do that or do we have to create one or where are we at on that? [LB99]

ELIZABETH NEELEY: Well, I think the claims of racial profiling, the 111 instances where citizens claimed racial profiling, I feel strongly that those claims should be reviewed by an independent organization for validity. [LB99]

SENATOR SEILER: Now tell me who that is. That's my interest. [LB99]

ELIZABETH NEELEY: I'm not sure that we have that structure set in place. [LB99]

SENATOR SEILER: Okay. That's what I wanted to know. [LB99]

SENATOR ASHFORD: This is so much like juvenile justice, Liz, when we started working on why do we just have aggregate data on all this. Why don't we...we're finally...and part of the bill that we introduced today has another data piece to it again, to try to even drill down further. What I'm...I'm going to propose that we ask Mike for this data and the breakdown immediately, and that we ask you to take a good look, I mean, quick look at it and just get some much...a little more qualitative data. What are we talking about here? [LB99]

ELIZABETH NEELEY: Okay. [LB99]

SENATOR ASHFORD: And then we can decide as a committee where to proceed, I would think. Does anyone have any objections, Senators, to that? I don't see any so LaMont can...will write a letter tomorrow to Mike and...the good thing about Mike Overton is he can interpret this data pretty quickly for us. And so we're going to get working on that. Thanks. [LB99]

ELIZABETH NEELEY: Great. Thanks for the opportunity. [LB99]

SENATOR ASHFORD: Thanks. Do we have anybody else that wants to chat with us this afternoon? Okay. That closes the hearing. Thank you all very much. (See also Exhibit 13.) [LB99]